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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Doc. No. FV–00–303 C]

Peaches, Plums, and Nectarines; Grade Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; correction.

SUMMARY: This document corrects final regulations published by the Agricultural Marketing Service (AMS) on February 27, 2004 [69 FR 9189] revising the United States Standards for Grades of Peaches. The rule incorrectly established a tolerance of 2 percent for soft, or overripe peaches en route or destination. This document corrects that error.

DATES: *Effctive Date:* May 21, 2004.

FOR FURTHER INFORMATION CONTACT: David Priester, Standardization Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 1661 South Building, STOP 0240, Washington, DC 20250–0240, Fax (202) 720–8871 or call (202) 720–2185; *e-mail David.Priester@usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction revised § 51.1214, Tolerances.

Need for Correction

As published, the regulatory text in paragraphs (a)(2)(ii) and (b)(2)(ii) of § 51.1214 inadvertently included soft and overripe peaches with the tolerance for decayed peaches. This document removes soft and overripe from the decay tolerance.

List of Subjects in 7 CFR Part 51

Agricultural commodities, Food grades and standards, Fruits, Nuts, Reporting and recordkeeping requirements, Trees, Vegetables.

PART 51—UNITED STATES STANDARDS FOR PEACHES

■ Accordingly, 7 CFR part 51 is amended by making the following corrections:

■ 1. The authority citation for part 51 continues to read as follows:

Authority: 7 U.S.C. 1622, 1624.

■ 2. In § 51.1214, paragraphs (a)(2)(ii) and (b)(2)(ii) are revised to read as follows:

§ 51.1214 Tolerances.

* * * * *

(a) * * *

(2) * * *

(ii) 7 percent for defects causing serious damage, included therein not more than 5 percent for serious damage by permanent defects and not more than 2 percent for decayed peaches.

* * * * *

(b) * * *

(2) * * *

(ii) 2 percent for peaches which are affected by decay.

Dated: May 17, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–11515 Filed 5–20–04; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 932

[Docket No. FV04–932–1 FIR]

Olives Grown in California; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule that decreased the assessment rate established for the California Olive Committee (committee) for the 2004 and subsequent fiscal years from $13.89 to $12.18 per ton of olives handled. The committee locally administers the marketing order regulating the handling of olives grown in California. Authorization to assess olive handlers enables the committee to incur expenses that are reasonable and necessary to administer the program. The fiscal year began January 1 and ends December 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: *Effective Date:* June 21, 2004.

FOR FURTHER INFORMATION CONTACT: Terry Vawter, Marketing Specialist, 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.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 148 and Order No. 932, both as amended (7 CFR part 932), regulating the handling of olives 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."

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California olive handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate established herein will be applicable to all assessable olives beginning on January 1, 2004, and continue until amended, suspended, or

terminated. 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 continues in effect the decreased assessment rate established for the committee for the 2004 and subsequent fiscal years from $13.89 per ton of assessable olives to $12.18 per ton of assessable olives.

The California olive marketing order provides authority for the committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program under §§ 932.38 and 932.39. The members of the committee are producers and handlers of California olives. They are familiar with the committee's needs and with the costs for goods and services in their local area, and are, thus, in a position to formulate an appropriate budget and assessment rate. The assessment rate is deliberated and formulated in a public meeting, and the expenditures are deliberated in various public subcommittee meetings prior to the committee meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2003 and subsequent fiscal years, the committee recommended, and USDA approved, an assessment rate that would continue in effect from one fiscal year to another unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the committee or other information available to USDA.

The committee met on December 11, 2003, and unanimously recommended fiscal year 2004 expenditures of $1,269,063 and an assessment rate of $12.18 per ton of olives. In comparison, last year's budgeted expenditures were $1,230,590. The assessment rate of $12.18 is $1.71 lower than the $13.89 rate previously in effect.

Expenditures recommended by the committee for the 2004 fiscal year include $633,500 for marketing development, $360,563 for administration, and $225,000 for research. The committee also recommended a fiscal year 2004 expenditure of $50,000 for the development of an enhanced flavor standards program.

Budgeted expenses for these items in 2003 were $633,500 for marketing development, $347,090 for administration, $250,000 for research. There were no budgeted expenditures for the development of flavor standards and flavor-standards inspection training for the 2003 fiscal year.

The California Agricultural Statistics Service (CASS) reported olive receipts for the 2003–04 crop year at 102,703 tons, which compares to 89,006 for the 2002–03 crop year. The increase in size of the 2003–04 crop, due in large part to the alternate-bearing characteristics of olives, has made it possible for the committee to recommend a decrease of $1.71 per ton in the assessment rate from the previous $13.89 per assessable ton to $12.18 per assessable ton. The assessment rate recommended by the committee was derived by considering anticipated expenses, actual olive tonnage received by handlers, and additional pertinent factors.

Income derived from handler assessments, interest, and utilization of reserve funds will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum of approximately one fiscal period's expenses as required by § 932.40 of the marketing order.

The assessable tonnage for the 2004 fiscal year is expected to be less than the receipts of 102,703 tons reported by CASS, because some olives may be diverted by handlers for uses that are exempt from marketing order requirements. The quantity of olives expected to be diverted cannot be published in this document. The olive industry consists of only three handlers, two of which are much larger than the third, and the confidentially of this handler information must be maintained to protect the proprietary business positions of each of the handlers.

The assessment rate will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the committee will continue to meet prior to or during each fiscal year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of committee meetings are available from the committee or USDA.

Committee and subcommittee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The committee's 2004 budget and those for subsequent fiscal years would be reviewed and, as appropriate, approved by USDA.

Final 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 final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions to ensure 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 1,200 producers of olives in the production area and 3 handlers subject to regulation under the marketing order. The Small Business Administration (13 CFR 121.201) defines small agricultural producers as those with annual receipts less than $750,000, and small agricultural service firms as those with annual receipts less than $5,000,000. Based upon information from the committee, the majority of olive producers may be classified as small entities, but only one of the three handlers may be classified as a small entity.

This rule continues in effect the decreased assessment rate established for the committee and collected from handlers for the 2004 and subsequent fiscal years. The assessment rate was decreased from $13.89 per ton to $12.18 per ton of assessable olives. The committee unanimously recommended 2004 fiscal year expenditures of $1,269,063 at the assessment rate of $12.18 per ton. That assessment rate is

$1.71 per ton lower than the previous rate.

The quantity of olive receipts for the 2003–04 crop year was reported by CASS to be 102,703 tons, but the actual assessable tonnage for the 2004 fiscal year is expected to be lower. This is because handlers are expected to divert some olives to exempt outlets on which assessments are not paid. The amount of assessable tonnage cannot be reported in this document because such information must be kept confidential to protect the business position of each of the three olive handlers.

The $12.18 per ton assessment rate should be adequate to meet this year's expenses when combined with funds from the authorized reserve and interest income. Funds in the reserve will be kept within the maximum of approximately one fiscal period's expenses as required by § 932.40 of the marketing order.

Expenditures recommended by the committee for the 2004 fiscal year include $633,500 for marketing development, $360,563 for administration, and $225,000 for research. The committee also recommended a fiscal year 2004 expenditure of $50,000 for the development of an enhanced flavor standards program.

Budgeted expenses for these items in 2003 were $633,500 for marketing development, $347,090 for administration, and $250,000 for research. There were no expenditures for the development of flavor standards and flavor-standards training for inspection personnel in the 2003 fiscal year.

Olive receipts totaled 102,703 tons for the 2003–04 crop year compared to the previous crop year's tonnage of 89,006. The committee has increased fiscal year 2004 expenses, but the increase in olive production makes the lower assessment rate possible.

The research expenditures will fund studies to develop chemical and scientific defenses to counteract a threat from the olive fruit fly in the California production area. Market development expenditures are the same because the committee's marketing program for fiscal year 2004 is similar.

The committee reviewed the budget and assessment rate, and unanimously recommended fiscal year 2004 expenditures of $1,269,063, which reflect decreased research expenditures and increased administrative and inspection expenditures.

While deliberating this budget, the committee considered information from various sources, such as the committee's Executive, Research, and Marketing Subcommittees. Alternate spending levels were discussed by these groups, based upon the relative costs and benefits to the olive industry of various research and marketing projects, the total quantity of assessable olives received by handlers, and other pertinent factors. Such deliberations resulted in the recommended assessment rate of $12.18 per ton of assessable olives.

A review of historical industry information and preliminary information pertaining to the upcoming fiscal year indicates that the grower price for the 2003–04 crop year will be a weighted average of $478 per ton for canning-size fruit and $254 per ton for limited-use size fruit. The weighted average is calculated by the committee staff and takes into account the prices per ton offered by each handler for various sizes of the major olive varieties produced.

Approximately 85 percent of a ton of olives are canning sizes and 10 percent are limited-use sizes, leaving the balance as cull fruit. Thus, given the current anticipated grower prices, the average grower price per ton would be $431.70. The estimated assessment revenue is expected to be approximately 2.8 percent of the average grower price. Total grower revenue on 102.703 tons would be $44,336,885.

This action will continue in effect the decreased assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived by the operation of the marketing order.

In addition, the committee's meeting was widely publicized throughout the California olive industry and all interested persons were invited to attend the meeting and participate in committee deliberations on all issues. Like all committee meetings, the December 11, 2003, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. The subcommittee meetings, as well, were public and all interested parties were encouraged to attend and provide comments. Finally, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses.

This rule imposes no additional reporting or recordkeeping requirements on California olive 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 interim final rule was published in the **Federal Register** on February 9, 2004 (69 FR 5905). Copies of the rule were provided to all handlers. Finally, USDA and the Office of the Federal Register made the interim final rule available through the Internet. A 60-day comment period was provided for interested persons to respond to the interim final rule. The comment period closed on April 9, 2004, and no comments were received.

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.

After consideration of all relevant material presented, including the information and recommendation submitted by the committee 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.

List of Subjects in 7 CFR Part 932

Marketing agreements, Olives, Reporting and recordkeeping requirements.

PART 932—OLIVES GROWN IN CALIFORNIA

■ Accordingly, the interim final rule amending 7 CFR part 932, which was published at 69 FR 5905 on February 9, 2004, is adopted as a final rule without change.

Dated: May 17, 2004.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 04–11512 Filed 5–20–04; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1415

RIN 0578–AA38

Grassland Reserve Program

AGENCY: Commodity Credit Corporation (CCC), United States Department of Agriculture (USDA).

ACTION: Interim final rule with request for comments.

SUMMARY: The Farm Security and Rural Investment Act of 2002 (2002 Farm Bill) amended the Food Security Act of 1985, to add the Grassland Reserve Program (GRP). The purpose of this program is to assist landowners and others in restoring and protecting eligible grassland and certain other lands through rental agreements and easements. This interim final rule sets forth how the Secretary of Agriculture (the Secretary), using the funds, facilities, and authorities of the Commodity Credit Corporation (CCC), will implement GRP to meet the statutory objectives of the program.

USDA made a determination to issue an Interim Final Rule with request for comments rather than a proposed rule in order to implement the program in fiscal year 2004 pursuant to this rule. USDA believes it is critical to put into place a rule that will guide the Department in implementing the program while at the same time provide the public with notice regarding how the program will be implemented. USDA also gave consideration to the fact that GRP implementation will be modeled after other established conservation programs. USDA is using its experiences from implementing other similar programs to develop operating procedures. USDA will consider all comments received when promulgating a final GRP rule.

DATES: The rule is effective May 21, 2004. Comments must be received by July 20, 2004.

ADDRESSES: Send comments by mail to Easement Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013–2890; or by e-mail: *FarmBillRules@usda.gov;* attn: Grassland Reserve Program. This rule may also be accessed via Internet through the NRCS homepage at *http://www.nrcs.usda.gov/programs/GRP* by selecting "Farm Bill" from the menu, then "Rules published in the **Federal Register**," and then selecting "Grassland Reserve Program." The rule may also be reviewed and comments submitted via the Federal Government's centralized rulemaking Web site at *http://www.regulations.gov.* All comments, including the name and address of each commenter, will become a matter of public record, and may be viewed during normal business hours by contacting NRCS at the address above.

FOR FURTHER INFORMATION CONTACT: Richard Swenson, Director, Easement Division, NRCS, P.O. Box 2890, Washington, DC 20013–2890; telephone: (202) 720–1845; fax: (202) 720–4265; e-mail: *richard.swenson@usda.gov,* Attention: Grassland Reserve Program. Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Regulatory Certifications

Executive Order 12866

The Office of Management and Budget (OMB) determined that this interim final rule is significant and must be reviewed by the Office of Management and Budget under Executive Order 12866. USDA conducted a cost-benefit analysis of the potential impacts associated with this Interim Final Rule.

Five options for determining State funding levels and their impacts on enrollment are examined. The first two examine alternatives for balancing GRP objectives. These options include: The Selected Option, which balances the amount of grassland, number of livestock operations, biodiversity, and landowner demand, and a continuation of FY2003 procedures, which is like the Selected Option, except for not giving consideration to landowner demand. The three additional options examine the consequences of concentrating on only a single objective, *e.g.*, native grasslands.

The Selected Option allocates State funding as a function of State number of grazing operations, acres of grassland under the threat of conversion, bio-diversity considerations, and State demand for funds, as measured by the number of offers for the GRP. This process is the same used in FY2003, except it includes consideration of interest within a State for demand for funds. This last component addresses high FY2003 participation demand.

Although the Selected Option enrolls fewer grasslands than some other options, the Selected Option distributes funds to States based on the number of grazing operations, the threat of grassland conversion to other uses, and a bio-diversity index, recognizing the implicit equality given the three program objectives by the statute. The demand component was used to capture producer willingness to participate and the quality of offers. Because this option balances the three statutory objectives, no single objective is maximized.

Copies of the analysis may be obtained from Richard Swenson, Director, Easement Division, NRCS, P.O. Box 2890, Washington, DC 20013–2890; telephone: (202) 720–1845; fax (202) 720–4265; e-mail: *richard.swenson@usda.gov,* Attention: Grassland Reserve Program and electronically at *http://www.nrcs.usda.gov/programs/GRP/.*

Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994

Pursuant to section 304 of the Federal Crop Insurance Reform Act of 1994 (Pub. L. 103–354), USDA classified this rule as non-major. Therefore, a risk analysis was not conducted.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this Interim Final Rule because the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553, or by any other provision of law, to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Small Business Regulatory Enforcement Fairness Act of 1996

This Interim Final Rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This Interim Final Rule will not result in annual effect on the economy of $100 million or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based companies to compete in domestic and export markets.

Environmental Analysis

An Environmental Assessment (EA) has been prepared to assist in determining whether this Interiin Final Rule would have a significant impact on the quality of the human environment such that an Environmental Impact Statement (EIS) should be prepared. Based on the results of the EA, USDA proposes issuing a Finding of No Significant Impact (FONSI) before a final rule is published. Copies of the EA and FONSI may be obtained from Andree DuVarney, National Environmental Specialist, Ecological Sciences Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013–2890. The GRP EA and FONSI will also be available at the following Internet address: *http://www.nrcs.usda.gov/programs/GRP.* Written comments on the EA and FONSI should be sent to Andree DuVarney, National Environmental Specialist, Ecological Sciences Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013–2890, or submit them via the Internet to *andree.duvarney@usda.gov.*

Paperwork Reduction Act

Section 2702 of the Farm Security and Rural Investment Act of 2002 requires that the implementation of this provision be carried out without regard to the Paperwork Reduction Act, Chapter 35 of title 44, United States Code. Therefore, USDA is not reporting recordkeeping or estimated paperwork burden associated with this Interim Final Rule.

Government Paperwork Elimination Act

NRCS is committed to compliance with the Government Paperwork Elimination Act (GPEA) and the Freedom to E-File Act, which require government agencies in general, and NRCS in particular, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

Civil Rights Impact Analysis

USDA has determined through a Civil Rights Impact Analysis that the issuance of this rule discloses no disproportionately adverse impacts for minorities, women, or persons with disabilities. Copies of the Civil Rights Impact Analysis is available, and may be obtained from Richard Swenson, Director, Easement Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013–2890, and electronically at *http://www.nrcs.usda.gov/programs/GRP.*

Executive Order 12988, Civil Justice Reform

This Interim Final Rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. The rule is not retroactive and preempts State and local laws to the extent that such laws are inconsistent with this rule. Before an action may be brought in a Federal court of competent jurisdiction, the administrative appeal rights afforded persons at 7 CFR parts 614, 780, and 11 must be exhausted.

Executive Order 13132, Federalism

This Interim Final Rule has been reviewed in accordance with the requirements of Executive Order 13132, Federalism. USDA has determined that the rule conforms to the federalism principles set forth in the Executive Order; would not impose any compliance cost on the States; and would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities on the various levels of government.

Unfunded Mandates Reform Act of 1995

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, USDA assessed the effects of this rulemaking action of State, local, and tribal governments, and the public. This action does 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.

Background

Historically, grassland and shrublands occupied approximately one billion acres, about half the landmass of the 48 contiguous United States (Richard Conner, Texas A&M, June 2001). Roughly 50 percent of these lands have been converted to cropland, urban land, and other land uses. Privately owned grasslands (pastureland and rangeland) cover approximately 526 million acres in this country (1997 National Resource Inventory (NRI)). Grasslands provide both ecological and economic benefits to local residents and society in general. Grassland importance lies not only in the immense area covered, but also in the diversity of benefits they produce. These lands provide water for urban and rural uses, livestock products, flood protection, wildlife habitat, and carbon sequestration. These lands also provide aesthetic value in the form of open space and are vital links in the enhancement of rural social stability and economic vigor, as well as being part of the Nation's history.

Grassland loss through conversion to other land uses such as cropland, parcels for home sites, invasion of woody or non-native species, and urban development threatens grassland resources. About 24 million acres of grasslands and shrublands were converted to cropland or non-agriculture uses between 1992 through 1997 (1997 National Resource Inventory).

In Fiscal Year (FY) 2003, GRP was implemented through a notice of funds availability published in the **Federal Register** on June 13, 2003 (See **Federal Register** Vol. 68, No. 114). The document explained that in FY 2003, CCC intended to use GRP to protect grazing lands from conversion, and support efforts to maintain or enhance biodiversity.

The Secretary has delegated authority to implement GRP jointly to the Administrator, Farm Service Agency (FSA), and the Chief, Natural Resources Conservation Service (NRCS). In addition, limited responsibilities associated with easement management and general program development have been delegated to the Forest Service (FS). Activities identified in this interim rule as being conducted by the USDA or the CCC will be performed by representatives of these three agencies, as appropriate.

The GRP rental agreements and easements are designed for working agricultural lands. Therefore, the program provides incentives to protect grassland resources while enabling agricultural producers to use the forage in their agricultural operation. There are multiple enrollment duration options for both the rental agreements and easements.

In the 2002 Farm Bill Managers' Report, Congress recommended that the GRP enrollment process be modeled after the Conservation Reserve Program (CRP), 16 U.S.C.3835a and the Wetlands Reserve Program (WRP), 16 U.S.C.3837 *et seq.* Like the CRP Continuous Sign-up and the WRP, applications for program enrollment in GRP can be filed at any time throughout the year. Application selection is based on ranking and selection criteria developed at the State level, following broad National guidelines. Although the GRP rental agreements are for working lands, the rental agreements are modeled after the CRP long-term rental contracts. Likewise, the easement acquisition process is similar to that used in the WRP. With both GRP easements and rental agreements, participants will have the opportunity to utilize common management practices to maintain the viability of the grassland acreage.

The Secretary evaluated whether the GRP could be administered by partnering with third parties to acquire easements, similar to the Farm and Ranch Lands Protection Program, 16 U.S.C. 3838h and 3838i, and concluded that the GRP statute does not provide authority to do so.

The GRP statute provides broad land eligibility criteria regarding the type of grasslands that can be enrolled in the program. USDA proposes in this regulation to emphasize program implementation to preserve the Nation's most critical grassland resources, both native and natural grasslands, and shrublands.

Discussion of the Program

The Grassland Reserve Program (GRP) is a voluntary program to assist landowners and agriculture operators in restoring and protecting grassland and land that contains forbs and shrublands. The Secretary of Agriculture delegated the authority to administer GRP on behalf of the Commodity Credit Corporation, to the Chief, Natural

Resources Conservation Service (NRCS) and the Administrator, Farm Service Agency (FSA). These agency leaders are Vice Presidents of the CCC. NRCS has the lead responsibility on technical issues and easement administration, and FSA has the lead responsibility for rental agreement administration and financial activities. The Secretary also delegated authority to the Forest Service to hold easements at the option of the landowner, on properties adjacent to USDA Forest Service properties. At the State level, the NRCS State Conservationist and the FSA State Executive Director will determine how best to utilize the human resources of both agencies to deliver the program and implement National policies in an efficient manner.

The program has a statutory enrollment cap of two million acres of restored or improved grasslands. USDA may enroll an excess of two million acres in the program, providing the additional acreage does not require restoration, and the program has sufficient funding. The statute also requires that 40 percent of the program funds be used for 10-year, 15-year, and 20-year rental agreements, and 60 percent of the funds be used for 30-year rental agreements and easements.

As defined in this rule, the term "restoration" not only includes restoring grassland from cropland and other uses, but it also refers to improving lands with existing stands of grasses, forbs, and shrubs. USDA has defined "restoration" as the implementation of any conservation practice (vegetative, management, or structural) that improves the values and functions of grasslands (native and natural plant communities). The term "improves" in this context means taking an existing grassland and moving it toward a higher functioning grassland condition. The definition of restoration is found in section 1415.3 of this rule. This regulation does not define the required restored condition in order to allow for flexibility in making such determinations at the local level in accordance with local conditions and desired outcomes. USDA recognizes that restoration includes the process of establishing practices and managing the land to reach a desired grassland condition. Enrolled lands will require periodic manipulation to maximize wildlife habitat and preserve grassland functions and values over time. The "restored" grassland condition will be determined by the NRCS State Conservationist, with input from the State Technical Committee.

GRP enrollment options include easements with various durations, including 30 years, permanent, or for the maximum duration allowed under State law; or rental agreements with a duration of 10-, 15-, 20-, or 30-years. Participants can enter into a restoration agreement in conjunction with either an easement or rental agreement, at the discretion of the USDA and if desired by the participant, to restore the ecological functions and values of these lands. The GRP statute does not authorize USDA to use restoration agreements as a stand-alone enrollment option.

As set forth in section 1415.5, land is eligible if it is privately owned land, including tribal land, and it is: (1) Grassland, land that contains forbs, or shrubs (including rangeland and pastureland); or (2) located in an area that has been historically dominated by grassland, forbs, and shrubs and has potential to provide habitat for animal or plant populations of significant ecological value if the land is retained in the current use of the land or restored to a natural condition. Lands incidental to the above described eligible lands may also be enrolled if the Secretary determines enrollment of such land is necessary for the efficient administration of a rental agreement or easement. Privately owned land does not include land owned by the Federal, State, or local government.

USDA, at the State level, based on national guidance, shall establish criteria to evaluate and rank applications for easements and rental agreements as outlined in this regulation at section 1415.8. As required by statute, emphasis will be placed on supporting grazing operations, plant and animal biodiversity, and grassland and land containing shrubs or forbs under the greatest threat of conversion.

USDA evaluated the following two approaches for allocating funds to projects. One approach is to allocate funds to States using a formula that incorporates factors associated with the program's areas of emphasis. Under this approach, each NRCS State Conservationist and the FSA State Executive Director would be given the responsibility to develop, within broad national guidelines and with input from State Technical Committees, ranking criteria against which to evaluate and select applications for funding.

Another approach is to develop national criteria and have all applications evaluated and selected nationally. Allocations would not be provided to States. USDA has used both approaches when implementing other conservation programs. Based on its experience with implementing GRP in fiscal year 2003, USDA is adopting the approach of allocating funds to States for selection of projects at the State level. This approach allows USDA to enhance its ability to address State grassland concerns, as well as enable States to use all conservation programs in a coordinated effort to address grassland concerns, giving consideration to the entire ecosystem. USDA recognizes that this approach results in some differences between State ranking criteria, and that it may be more challenging to address specific national priorities. USDA welcomes comments on this decision. State ranking criteria will be available to the public through local USDA service centers or on the NRCS Grassland Reserve Program web site. See *http://www.nrcs.usda.gov.* Select "Programs" from the menu, then "Grassland Reserve Program." Anyone having comments on the 2003 State ranking criteria should refer the comments to the respective NRCS State Conservationist or FSA State Executive Director located in the USDA State Office. Addresses for the State offices are available at *http://www.fsa.usda.gov/pas/default.asp.* Select "Your State Office" from the menu bar.

USDA seeks public comment on the criteria and weighting factors that should be used to allocate funds to States, and the national guidance from which States develop their individual ranking criteria. In particular, USDA asks that respondents provide information on credible data that is national in scope related to grassland plant and animal biodiversity. The current allocation formula, developed by USDA at the national level, includes data from the NRI regarding pasture and rangeland conversion, prime farmland used as range or pasture, and total range and pastureland acreage. From agriculture statistics USDA uses data regarding agriculture operations. USDA also includes information from the U.S. Fish and Wildlife Service about threatened and endangered plant and animal species. The data was categorized as either being a biodiversity, conversion, or grazing operation factor. In addition, now that USDA has collected program demand data from the 2003 signup, there will be a demand factor included in the State allocation formula. Program demand data is expressed in terms of total applications received, total acres offered for enrollment, and total estimated cost of applications received. For fiscal year 2004 and beyond, demand may be reflected in terms of applications received, acreage associated with such applications, funding needs associated with unfunded applications, or a

combination of all three. USDA intends to provide equal weight to each area of emphasis (grazing operations, threat of conversion, and biodiversity of plants and animals) and the demand category in the allocation formula.

Once USDA State offices receive their allocation, FSA and NRCS, at the State level, will determine the distribution of funds within the State, with input from the State Technical Committee. FSA and NRCS may allocate funds to regions based on natural resource priority, distribute funds for easements and rental agreements based on landowner interest in the various enrollment options, or establish funding pools. If a State office lacks funds to enroll an entire project, the applicant will be provided the opportunity to reduce the amount of land offered, or change the duration of the enrollment option, providing the ranking score is not lowered below the score of the next application on the ranking list. If the applicant declines adjusting the offered acreage level, the USDA at the State level can accept the next eligible application on the list of unfunded applicants.

Easements

Section 1415.4 provides that for participation in an easement option, the applicant must be the owner of the eligible land. To grant an easement to the United States, the landowner must possess clear title to the land or be able to provide subordination agreements from third parties with interest in the land, and provide access to the property from a public road. The landowner must comply with the terms of the easement and associated restoration agreement, if one is required.

Easement payments are based on the current market value of the land less the grazing value of the land encumbered by the easement. Under the terms of the easement, in addition to the use of the forage, the landowner retains the right to grassland uses so long as such use is compatible with maintaining the viability of the grassland resources. In addition to grazing, haying, mowing, and seed production, other uses may include hunting, fishing, hiking, camping, bird watching, and other non-motorized recreational activities. Since landowners retain certain rights to grassland resources, for appraisal purposes, grazing value has been defined as grassland value. Land values will be determined through a site-specific appraisal. For 30-year easements, or an easement for the maximum duration allowed under State or tribal law, a landowner receives 30 percent of the appraised value for a permanent easement. Easement payments may be provided in one lump sum payment at the time of closing or participants may elect to receive installment payments. Participants who elect to receive installment payments can receive no more than 10 annual payments of equal or unequal amount, as agreed to by the USDA and the landowner.

USDA has developed a standard conservation deed that the United States will use for all easements purchased under GRP. A copy of the deed may be viewed at *http://www.nrcs.usda.gov.*

Subsurface Resource Concerns

In promulgating this rule, USDA considered whether the exploration and development of subsurface resources was compatible with the purpose of GRP. The GRP statute provides that the conduct of any activity that would disturb the surface of the land covered by the GRP easement or rental agreement is prohibited, except for restoration, fire rehabilitation, and construction of fire breaks. Therefore, the extraction of subsurface resources is prohibited on all lands participating in GRP. However, subsurface resource exploration and extraction is permissible when it is accomplished remotely, that is from adjacent land not covered by a GRP easement, and when it does not result in subsidence or any other adverse effects to the surface estate. USDA finds the extraction of certain materials, such as gravel, to be inconsistent with the purposes of the program. USDA contemplated appraising land based on surface rights alone, but determined that this appraisal method prohibits USDA from restricting the disturbance of the surface when such rights are owned by the GRP participation landowner. Therefore, the easement appraisal will consider full market value rather than surface value, in those instances where the applicant owns the rights to the surface and subsurface estate.

For rental agreements, USDA is adopting subsurface resource policy similar to that of the Conservation Reserve Program. If the subsurface resources are severed and the owner of such rights decides to extract the resources, the affected land will be terminated from the rental agreement with no penalty to the participant. If the rights are not severed and the landowner participant exercises such rights, the participant will have to refund to the USDA payments received on the affected acres.

Rental Agreements

Section 1415.4 provides that landowners and other people who have general control of property may apply for enrollment in rental agreements through GRP. Applicants who are not landowners need to provide evidence of control of the property for the length of the agreement. If rental agreement payments are to be divided between the landowner and other participants or multiple landowners, the rental agreement will need to be signed by all parties, indicating their respective share of the payments.

As required by statute, rental payment amounts will not exceed 75 percent of the grazing value for the length of the agreement. Rental payments will be paid annually after the anniversary date of the agreement. Local grazing values are determined based on a methodology developed for the CRP using estimated forage production by soil type and knowledge of local rental rates. USDA will make administrative adjustments to local rates in areas where there is a dramatic difference between county rates. County rental rates will be posted in USDA Service Centers after being evaluated locally by USDA representatives to determine whether the rates generally reflect local prevailing rental rates. There may be some significant differences within a State due to elevation changes and precipitation variability.

Persons who participate in a rental agreement may offer the land for an easement, providing the duration of the easement exceeds the duration of the rental agreement, the application ranks high enough to be funded, all other eligibility criteria are met, and funds are available to acquire an easement. The easement application will be considered a new offer that will be evaluated with all other new offers. The rental agreement will be terminated upon easement closing. This policy allows USDA to obtain longer term protection on lands considered valuable for enrollment. This policy will apply to those individuals who signed up for a rental agreement in FY2003 and subsequent years.

Provisions That Apply to Both Easements and Rental Agreements

Program participants are subject to the Adjusted Gross Income Limitation set forth at 7 CFR part 1400. In summary, this limitation provides that individuals or entities that have an average adjusted gross income exceeding $2.5 million for the three tax years immediately preceding the year the contract is approved are not eligible to receive

program benefits or payments, unless 75 percent of the adjusted gross income is derived from farming, ranching, or forestry operations. Easement or rental agreement payments received by a participant shall be in addition to any payments that the participant is otherwise eligible to receive under other Federal laws.

As required by statute, easements and rental agreements will:

(1) Permit grazing on the land in a manner that is consistent with maintaining the viability of the grassland, shrubs, forbs, and habitat for wildlife species adapted to the locality.

(2) Permit haying, mowing, or harvesting for seed production, except during the nesting season for birds in the local area that are in significant decline. When bird species are identified by USDA as needing protection during the nesting season, mowing, haying, and harvesting of grass seed will be permitted as determined by the NRCS State Conservationist in accordance with Federal and State law. In making this determination, NRCS will consult with the State Technical Committee, which includes representation from appropriate State and Federal agencies.

(3) Allow for fire rehabilitation and construction of firebreaks, fences, watering facilities, and practices that protect and restore the grasslands functions and values.

(4) Prohibit the production of row crops, fruit trees, vineyards, or any other agricultural commodities or activity that requires disturbance of the soil surface, except for those activities permitted above. Grassland and wildlife management practices and restoration activities that require disturbing the soil surface, such as light discing, will be permitted at the discretion of USDA.

Both GRP easements and rental agreements will require that the land is managed to maintain the vitality of the plant community as described in the conservation plan. The plan will take into account management practices necessary for the control of invasive species. At the discretion of USDA and subject to funding availability, landowners may include a restoration agreement with both enrollment options that will provide for: maintaining the viability of the grassland; sufficient ground cover to protect the soil from wind and water erosion; forage production for grazing animals, and wildlife habitat. The grassland restoration plan will be implemented according to the schedule developed by USDA. Restoration agreements will provide cost-share assistance for installing practices that will restore or protect the functions and values of the grassland and shrubland. In addition to reestablishing desirable grass cover, restoration practices may include practices associated with grazing management, or other management activities designed to preserve grassland acreage, such as controlled burns. The GRP statute provides that payments may be made to the participant of not more than 90 percent for the cost of carrying out restoration measures and practices on grassland and shrubland that has never been cultivated, and not more than 75 percent on restored grassland and shrubland that at one time was cultivated. Cost-shared practices shall be maintained by the participant for the life of the practice. The life of the practice is determined by the NRCS State Conservationist, and shall be consistent with other USDA conservation programs. All conservation practices will be implemented in accordance with the NRCS Field Office Technical Guide.

Summary of Provisions and Request for Comment

USDA welcomes comments on all aspects of this Interim Final Rule. The following describes the specific requirements in each section of the regulation. Activities identified in this regulation as being conducted by USDA or the CCC, will be performed by representatives of either the Farm Service Agency, the Natural Resources Conservation Service, or the U.S. Forest Service. Additionally, USDA fully intends to use the services of third party providers identified in 7 CFR part 652.

Section 1415.1 Purpose

This section sets forth the purpose and objectives of the program. In carrying out this program, the Secretary will focus GRP resources on the following:

1. Preserving native and natural grasslands and shrublands;

2. Protecting grassland and shrubland from the threat of conversion; conversion refers to all threats, including conversion to non agriculture uses, conversion to cropland, and vegetation changes to non-grassland covers;

3. Supporting grazing operations; and

4. Maintaining and improving plant and animal biodiversity.

The Secretary has determined that it makes sense to focus the program on those grasslands and shrublands that are at greatest risk of being lost. Therefore, the overall program emphasis will be on preserving native and natural species.

After completing the FY 2003 sign-up, USDA received feedback from conservation organizations and Congressional representatives that GRP should focus on restoring and protecting native and natural grasses, shrubs, and forbs. The statute identifies eligible land as grassland, land that contains forbs, or shrubland. It does not identify whether the program should emphasize native species, nor does it exclude certain types of grassland or shrublands from being enrolled in the program. However, USDA recognizes that grassland and shrublands that are native support an abundant diversity of plant and animal species along with other attributes. Once native grassland or shrubland is converted, it is often impractical, and sometimes impossible, to restore the land with its many attributes back to its original state. In many areas of the country where it is impractical to restore native plant species, other nonnative species have been used to serve similar purposes. Consequently, USDA proposes to emphasize protecting those eligible lands that consist of native and natural species.

Conservation organizations and Congressional representatives also expressed that USDA should use the Farm and Ranch Lands Protection Program (FRPP) to protect land subject to urban conversion pressures, and that GRP should focus on lower cost land subject to other conversion pressures outside of developing urban areas. These concerns primarily result from the high cost of easements in urban areas. The Secretary has the authority through FRPP, not GRP, to leverage Federal funds with non-Federal funds. The GRP statute does not provide the Secretary the flexibility to offer easement applicants amounts lower than the fair market value less the grazing value, nor does the USDA have the authority to share with other third parties the cost of acquiring easements. Therefore, the Secretary has been contemplating how the implementation of these two easement programs should fit together. When considering the scope of eligible lands, the amount of interest expressed by people to participate in GRP (approximately 13,000 applications offering 8.9 million acres received in FY 2003), and the limited GRP funding, the Secretary determined that USDA can preserve far greater grassland resources if GRP focuses on non-urban lands. The Secretary recognizes that in some States the primary threat to grassland is urban development, and that GRP rental agreement payment rates will provide little incentive to keep the acreage in grass cover. Since easement costs in areas with intense urban pressures tends to be quite high on a per acre basis, and

FRPP is able to leverage a large percentage of funds with non-Federal sources while GRP cannot, the Secretary may utilize FRPP easements to the extent practical on lands under extreme threat of conversion to non-agricultural uses. However, the focus of FRPP will remain protecting lands for broad agricultural use, including cropland. The Secretary intends to take a common sense approach to implementing both programs, and where it is more appropriate or strategically advantageous to protect important grassland in urbanizing areas, the USDA may use GRP to purchase easements in those areas. USDA State offices will be provided the flexibility to minimize the enrollment of high cost projects by considering cost in the State ranking criteria.

Section 1415.2 Administration

This section includes language on general program administration and policy that sets forth the role of the State Technical Committee in the development of criteria for ranking and selecting applications and addressing related technical and policy matters in the implementation of the program.

Section 1415.3 Definitions

This section defines terms used throughout the proposed rule. Some of the terms in this section such as Administrator, Chief, Commodity Credit Corporation, Cost-share, Department, etc., are not unique to GRP, and the definitions are consistent with definitions in other program regulations. For other terms, such as grassland value, grazing value, restored grassland, restoration etc. this section defines how these terms will be utilized for GRP.

Section 1415.4 Program Requirements

In this section, USDA identifies the requirements for participation in GRP. Earlier in the preamble § 1415.4(a) was referenced regarding ownership requirements. Section 1415.4(c) requires that participants follow a conservation plan that maintains the viability of the grassland regardless of the grassland use. The Secretary has determined that such a requirement is needed to carryout the purposes of GRP (see 16 U.S.C. 3830o). The level of restoration or management required in a conservation plan is established by the NRCS State Conservationist in each State, with input from the State Technical Committee.

USDA is seeking input regarding GRP project management. Under this rule, USDA is requiring participants to manage the GRP acreage to move toward a certain natural resource condition without requiring that certain species of grasses, shrubs, or forbs be planted. This policy makes sense considering the general purpose of the authorizing statute on land eligibility and the high cost of reestablishing native grasses in some settings. Management requirements may change over the life of the easement or rental agreement based on the natural resource response to such activities. Since the GRP statute is not specific about the types of land that should be enrolled in the program, once land has been accepted into the program USDA seeks input on whether a participant should be able to maintain the current cover even if it contains a monoculture of a less desirable species, or whether a participant should be required to manage the property to move toward a certain natural resource condition. USDA is reluctant to require participants to fully restore project acreage to native species because of the extreme cost, and in some localities, it is impractical to do so. However, in instances where a grassland cover does not exist, participants will be required to establish a grassland cover with either native or natural species to the extent it is practical, as determined by the NRCS State Conservationist.

Section 1415.5 Land Eligibility

The language in this section identifies eligible land as defined in the GRP statute. The GRP statute does not restrict the amount of acreage a landowner can offer for the program or the maximum payment a person can receive over the life of the contract or otherwise. The statute does provide for a minimum acreage enrollment level.

Section 1415.5(d) provides that 40 contiguous acres is the minimum acreage offer that will be accepted in the program, however, less than 40 acres may be accepted if USDA grants a waiver. USDA recognizes that some grassland habitat is considered irreplaceable and thus has determined to provide States the discretion to determine when the 40 acre minimum requirement will be waived. Decisions associated with this waiver should be granted based on input from the State Technical Committee and local natural resource concerns. USDA policy is to ensure that NRCS State Conservationists make this determination based on all the purposes of GRP as provided for in § 1415.1. State Conservationists may consider establishing separate funding pools based on offer size.

USDA considered providing States greater flexibility to set minimum acreage levels in States where there is a strong interest in preserving very large blocks of grassland and offers below a certain level have virtually no chance of being accepted into the program due to intense competition. However, the statute directs which lands are eligible for consideration under GRP. Accordingly, rather than establish policy that impacts eligibility, USDA determined to address this issue through the ranking criteria at the State level. Allowances shall be made to ensure the ranking criteria does not discriminate against small or limited resource producers. USDA will periodically review the types of projects being enrolled and compare those projects with the applications being submitted for participation to evaluate whether small or limited resource producers are being routinely prohibited from participating in the program.

Section 1415.5(f) makes land ineligible if it is already protected by an easement or contract that requires the GRP applicant to maintain the grassland resources. If the existing easement or agreement is with USDA or with a program funded through USDA, USDA will look to the program rules of the existing contract or the terms of the easement to determine whether such agreement can be canceled in order to enroll the land in GRP. This policy was determined because it is not fiscally responsible to pay someone twice for the same natural resource protection. USDA welcomes comment on this policy, especially as it relates to the relationship between GRP and the Conservation Reserve Program, Environmental Quality Incentives Program and the Wildlife Habitat Incentives Program.

Section 1415(g) of the Interim Final Rule addresses the issue of third party ownership of subsurface mineral rights on land proposed for enrollment under a rental agreement or an easement. Specifically, this rule provides that such lands may be enrolled in GRP. If the third party exercises such rights during the agreement period, the agreement will be terminated without penalty on the affected land. The land may be reoffered for the program at a later date if the grassland resources are restored, subject to eligibility rules and funding at that time. For easement enrollment, such lands may only be offered if the third party subordinates its rights to the resources or if USDA determines that the risk to the grassland resources is minimal if such rights are exercised (*i.e.*, would not undermine the conservation purposes of the easement).

Section 1415.6 Participant Eligibility

This section sets forth the eligibility for participation in GRP. Only landowners may participate in the

easement option, because only landowners have the ability to convey property rights. Both landowners and tenants can participate in the rental agreement enrollment options. However, if a tenant wishes to participate without a landowner, the tenant must provide evidence of control for the duration of the agreement period.

Since the GRP is a Title XII program, all participants are subject to the conservation compliance requirements found in 7 CFR, part 12.

Section 1415.7 Application Procedures

This section provides general information about the application process. Interested applicants can file an application at any time with their local USDA Service Center.

Section 1415.8 Establishing Priority for Enrollment of Properties

This section sets forth policy for developing the ranking and evaluation criteria. The GRP statute directs the Secretary to emphasize support for grazing operations, plant and animal biodiversity, and the threat of conversion in project selection. It does not give guidance about whether any of these factors should be given greater consideration than the others.

As discussed earlier in the preamble, USDA is placing a priority on protecting native or natural grassland and shrubland in the ranking process to the extent practical, and it is providing States the flexibility to develop ranking criteria that may encourage participants to restore their land back to a natural or native plant community. Land not currently in grass or shrubs that needs to be reseeded back to a grassland or shrubland may be eligible for the program if the applicant agrees to reseed the land back to its historically dominated grassland, shrubland, or forb plant community. However, if it can be demonstrated that reseeding to appropriate introduced plant species has potential to serve as habitat for animal or plant populations of significant ecological value, such land may be enrolled in the program and reseeding can take place through a GRP restoration agreement. Lower enrollment priority may be given to smaller parcels, especially in States where protecting larger grassland parcels is more desirable from an administrative and environmental standpoint. By prioritizing the types of eligible land for funding, USDA seeks to secure maximum conservation benefits for the Federal dollar expended. USDA is seeking specific comments on this decision.

USDA does provide its offices at the State level, the flexibility to establish one or more ranking pools. Although each pool will use the State established ranking criteria, the projects within one pool will only compete with similar projects. USDA, at the State level, may determine the portion of its funds to direct to each established ranking pool. Ranking pools will be established prior to conducting a signup.

Section 1415.9 Enrollment of Easements and Rental Agreements

This section describes the process for enrollment in GRP which is similar to that used for the Conservation Reserve Program for rental agreements and the Wetlands Reserve Program for easements. This approach was suggested by Congress in the Managers Report to the authorizing statute. For rental agreement projects, land is considered enrolled when the rental agreement is approved by USDA. For easement projects, land is considered enrolled when a landowner accepts a letter of tentative acceptance by signing documentation that indicates the landowner's intent to continue with the project.

Section 1415.10 Compensation for Easements and Rental Agreements

This section sets forth the methodology for determining compensation for both easements and rental agreements. For rental agreements, the statute at 16 U.S.C. 3838p requires that USDA pay participants not more than 75 percent of the grazing values. For the FY 2003, signup period grazing values for rental agreements were determined administratively based on compensation rates for the Conservation Reserve Program. Rates were established for each county, rather than on a site specific basis. This process enabled USDA to post compensation rates for public information and minimized the administrative burden at the field level for USDA employees.

The statute provides at 16 U.S.C. 3838p that easement compensation rates be determined based on the fair market value of the land, less the grazing value of the land encumbered by the easement. USDA will use certified land appraisers to develop easement compensation rates on a site specific basis. USDA recognizes that in certain parts of the country, the cost of acquiring easements may be considerable. Therefore, the Secretary evaluated alternatives to minimize the per acre cost of enrolling projects in the program, such as establishing maximum payment rates or contract limits. However, the Secretary determined the statute, by requiring a fair market valuation, does not permit a non-appraisal approach to valuing conservation easements.

Section 1415.11 Restoration Agreements

This section sets forth the terms and conditions under which USDA will enter into a restoration agreement. GRP does not have the authority to enroll land in restoration agreements as a separate, stand-alone enrollment option. Consequently, USDA will only enter into restoration agreements in conjunction with easements and rental agreements at the discretion of USDA, subject to available funding, and when it is supported by the participant.

Eligible practices include land management, vegetative, and structural practices and measures that will improve the grassland and shrubland ecological functions. Specific practices eligible for payment will be determined by the USDA at the State level with advice from the State Technical Committee. Limitations on cost-share rates set forth in this rule are those provided for in the GRP statute at 16 U.S.C. 3838p.

Section 1415.12 Modifications

This section describes when easements and rental agreements may be modified. For both easements and rental agreements, modifications may be made to the conservation plan by mutual agreement between the USDA and the participant as changes occur in the participant's operation and land management strategy. However, any modification must continue to ensure the viability of the grassland, and meet the other objectives of the GRP.

Section 1415.13 Transfer of Land

This section discusses the impact of transferring ownership or control of land enrolled in GRP.

Section 1415.17 Easement Administrative Delegations to Third Parties

The GRP statute at 16 U.S.C. 3838q provides that the Secretary may permit a private conservation or land trust organization, or a State agency to hold and enforce an easement, in lieu of the Secretary, subject to the right of the Secretary to conduct periodic inspections and enforce the easement. The Secretary has interpreted the word "hold" in this context to mean "administer." Prior to permitting an approved third party to hold and enforce an easement, USDA must determine that granting such permission

will result in the protection of grassland, land that contains forbs, and shrubland; the owner authorizes the third party to hold and enforce the easement; and the third party agrees to assume the costs incurred in administering and enforcing the easement, including the costs of restoration or rehabilitation of the land as required by the landowner and the third party. The intent is not to have the third party cover the costs of natural resource practices required through GRP. However, the third party must cover costs of practices that it requires above what is required by GRP. The third party must submit its intent to impose these additional requirements to USDA to determine whether they are consistent with the conservation purposes of the easement.

In GRP, the Secretary administers the easement on behalf of the United States, and may delegate the easement administrative responsibilities to a private organization or State agency under certain conditions. However, the GRP statute does not provide authority for the Secretary to convey property rights acquired under the authority of the GRP statute.

This section provides that certain private organizations, as set forth in the statute, and State agencies interested in managing and enforcing GRP easements, may apply for GRP administration. The criteria and approval process required for participation are set forth below. The application packages must include:

(1) Certification that the conservation organization or land trust is an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 that is exempt from taxation under section 501(a) of that Code; or is described in section 509(a)(3), and is controlled by an organization described in section 509(a)(2), of that Code.

(2) Certification that the applicant has the human and financial resources necessary to administer and enforce the easements, and that the applicant has relevant experience with easement enforcement activities.

(3) Certification that the applicant's charter expresses a commitment to conserving agriculture land, grassland, or rangeland. The application will require a summary of such commitment.

(4) Estimates in terms of acreage, number of easements, and funding requirements that the third party is willing to assume on behalf of the Secretary.

(5) Description of the human resources available to perform tasks associated with easement management and enforcement, including information about range and grassland management for livestock and wildlife, and realty management expertise.

(6) Budgetary information that demonstrates the organization is prepared to assume the Secretary's duties.

State agencies do not have to submit information related to items (1) or (3) above. All other requested information must be included with State agency applications. Application packages will be reviewed by both the Chief, NRCS, and the Administrator, Farm Service Agency, or their designees, for suitability of the party to administer the GRP easement. This authority may be delegated to NRCS State Conservationists and FSA State Executive Directors. Multiple third party applications may be approved for each State.

Application approval means the private organization or State agency meets the Secretary's requirements for managing and enforcing easements. Since landowners must authorize a third party easement administrator, Secretarial approval does not guarantee that the approved applicant will receive GRP easements to administer. Those agencies and organizations selected to manage easements will be required to submit an annual report to the Secretary.

Sections 1415.14 Through 1415.16 and 1415.18 Through 1415.20

These sections are consistent with other conservation programs and contain standard administrative policy associated with contract violations and remedies, payments not subject to claims, assignment of payments, appeals, etc. Nonetheless, USDA welcomes comments regarding this section on land enrolled in GRP.

Other

There has been much discussion within USDA regarding the development of industrial windmills on grassland acreage. USDA is prohibiting industrial windmills on GRP acreage because the structure is unrelated to protecting the viability of the grassland acreage, it requires disturbing the soil surface in a manner that is not permitted in the GRP statute, and it would encourage people wanting to establish other types of towers on GRP acreage. The public is free to comment on this policy decision as well.

List of Subjects in 7 CFR Part 1415

Administrative practice and procedure, Agriculture, Soil conservation, Grassland, Grassland protection, Grazing land protection.

■ For the reason stated in the preamble, chapter XIV of 7 CFR is amended by adding a new part 1415 as set forth below:

PART 1415—GRASSLAND RESERVE PROGRAM

Sec.

Authority: 16.U.S.C. 3838n–3838q.

§ 1415.1 Purpose.

(a) The purpose of the Grassland Reserve Program (GRP) is to assist landowners in protecting, conserving, and restoring grassland resources on private lands through short and long-term rental agreements and easements.

(b) The objectives of GRP are to:

(1) Emphasize preservation of native and natural grasslands and shrublands, first and foremost;

(2) Protect grasslands and shrublands from the threat of conversion;

(3) Support grazing operations; and

(4) Maintain and improve plant and animal biodiversity.

§ 1415.2 Administration.

(a) The regulations in this part set forth policies, procedures, and requirements for program implementation of the GRP as administered by the Natural Resources Conservation Service (NRCS) and the Farm Service Agency (FSA). The regulations in this part will be administered under the general supervision and direction of the NRCS Chief and the FSA Administrator. These two agency leaders will:

(1) Concur in the establishment of program policy and direction; development of the State allocation formula, and development of broad national ranking criteria;

(2) Use a national allocation formula to provide GRP funds to USDA State

offices that emphasizes support for biodiversity of plants and animals, grasslands under the greatest threat of conversion, and grazing operations. The allocation formula will also include a factor representing program demand. The demand factor could be expressed in terms of applications received, acres offered, funding needs for such applications, or a combination of these elements. The allocation formula may be modified periodically to change the emphasis of any factor to reflect information about natural resource concerns. The data in the allocation formula will be updated periodically as new information becomes available.

(3) Ensure the National, State and local level information regarding program implementation is made available to the public;

(4) Consult with USDA leaders at the State level and other Federal agencies with the appropriate expertise and information when evaluating program policies and direction; and

(5) Authorize NRCS State Conservationists and FSA State Executive Directors to determine how funds will be used and how the program will be implemented at the State level.

(b) At the State level, the NRCS State Conservationist and the FSA State Executive Director are jointly responsible to:

(1) Identify State priorities for project selection, based on input from the State Technical Committee;

(2) Identify, as appropriate, USDA employees at the field level responsible for implementing the program, and the implementation process considering the nature and extent of natural resource concerns throughout the State and the availability of human resources to assist with activities related to program enrollment;

(3) Develop program outreach materials at the State and local level to ensure landowners, operators, and tenants of eligible land are aware and informed that they may be eligible for the program;

(4) Develop conservation practice cost-share rates;

(5) Administer and enforce the terms of easements and rental agreements unless this responsibility is delegated to a third party as provided in §1415.17; and

(6) With advice from the State Technical Committee, develop criteria for ranking eligible land, consistent with national criteria and program objectives and address related policy matters regarding program direction for GRP in the applicable State. USDA, at the State level, has the authority to accept or reject the State Technical Committee recommendations; however, USDA will give consideration to the State Technical Committee's recommendations.

(c) The funds, facilities, and authorities of the Commodity Credit Corporation are available to NRCS and FSA to implement GRP.

(d) Subject to funding availability, the program may be implemented in any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(e) The Secretary may modify or waive a provision of this part if he or she deems the application of that provision to a particular limited situation to be inappropriate and inconsistent with the environmental and cost-efficiency goals of GRP. This authority cannot be further delegated. No provision of this part which is required by applicable law may be waived.

(f) No delegation in this part to lower organizational levels shall preclude the Chief, NRCS, or the Administrator, FSA, from determining any issue arising under this part or from reversing or modifying any determination arising from this part.

(g) The Chief, NRCS, may delegate at any time Federal easement administration and enforcement responsibilities to approved State Agencies, or approved private conservation or land trust organizations with the consent or at the request of the participating landowner. The USDA Forest Service may hold easements on properties adjacent to USDA Forest Service land, with the consent of the landowner.

(h) Program participation is voluntary.

(i) Applications for participation will be accepted on a continual basis at local USDA Service Centers. NRCS and FSA at the State level will establish cut-off periods to rank and select applications. These cut-off periods will be available in program outreach material provided by the local USDA Service Center. Once funding levels have been exhausted, eligible applications will remain on file until additional funding becomes available or the applicant chooses to be removed from consideration.

(j) The services of other third parties as provided for in 7 CFR part 652 may be used to provide technical services to participants.

§ 1415.3 Definitions.

Administrator means the Administrator of the Farm Service Agency (FSA) or the person delegated authority to act for the Administrator.

Chief means the Chief of the Natural Resources Conservation Service (NRCS) or the person delegated authority to act for the Chief.

Commodity Credit Corporation (CCC) is a Government-owned and operated entity that was created to stabilize, support, and protect farm income and prices. CCC is managed by a Board of Directors, subject to the general supervision and direction of the Secretary of Agriculture, who is an ex-officio director and chairperson of the Board. The Chief and Administrator are Vice Presidents of CCC. CCC provides the funding for GRP, and FSA and NRCS administer the GRP on its behalf.

Conservation District means any district or unit of State, tribal, or local government formed under State, tribal, or territorial law for the express purpose of developing and carrying out a local soil and water conservation program. Such district or unit of government may be referred to as a "conservation district," "soil conservation district," "resource conservation district," "land conservation committee," or similar name.

Conservation plan means a record of the client's decisions and supporting information, for treatment of a land unit or water as a result of the planning process, that meets NRCS Field Office Technical Guide quality criteria for each natural resource (soil, water, air, plants, and animals) and takes into account economic and social considerations. The plan describes the schedule of operations and activities needed to solve identified natural resource problems and take advantage of opportunities at a conservation management system level. The needs of the client, the resources, Federal, State, and local requirements will be met by carrying out the plan.

Conservation practice means a specified treatment, such as a structural or land management practice, that is planned and applied according to NRCS standards and specifications.

Cost-share agreement means the document that specifies the obligations and the rights of any person who has been accepted for participation in the program.

Department means United States Department of Agriculture.

Easement means a conservation easement, which is an interest in land defined and delineated in a deed whereby the landowner conveys certain rights, title, and interests in a property to the United States for the purpose of protecting the grassland and other conservation values of the property.

Under GRP, the property rights are conveyed in a "conservation easement deed."

Easement area means the land encumbered by an easement.

Easement payment means the consideration paid to a landowner for an easement conveyed to the United States under the Grassland Reserve Program.

Field office technical guide means the official local NRCS source of resource information and interpretations of guidelines, criteria, and standards for planning and applying conservation treatments and conservation management systems. It contains detailed information for the conservation of soil, water, air, plant, and animal resources applicable to the local area for which it is prepared.

Forb means any herbaceous plant other than those in the grass family.

Grantor is the term used for the landowner that is transferring land rights to the United States through an easement.

Grassland means land on which the vegetation is dominated by grasses, grass-like plants, shrubs, and forbs. The definition of grassland as used in the context of this part includes shrubland, land that contains forbs, pastureland, and rangeland.

Grazing value means the value assigned to the grassland cover by USDA.

Improved pasture means grazing land permanently producing natural forage species that receives varying degrees of periodic cultural treatment to enhance forage quality and yields and is primarily harvested by grazing animals.

Landowner means a person or persons holding fee title to the land.

Native means a species that is a part of the original fauna or flora of the area.

Natural means a native or an introduced species that is adapted to the ecological site and can perpetuate itself in the community without cultural treatment. For the purposes of this part the term "natural" does not include noxious weeds.

Participant means a landowner, operator, or tenant who is a party to a GRP agreement. The term "agreement" in this context refers to GRP rental agreements and option to purchase agreements for easements. Landowners of land subject to a GRP easement are also considered participants regardless of whether such landowner initiated the sale of the easement to the Federal Government.

Pastureland means a land cover/use category of land managed primarily for the production of introduced forage plants for grazing animals. Pastureland cover may consist of a single species in a pure stand, a grass mixture, or a grass-legume mixture. Management usually consists of cultural treatments: fertilization, weed control, reseeding or renovation, and control of grazing.

Permanent easement means an easement that lasts in perpetuity.

Private land means land that is not owned by a governmental entity.

Rangeland means a land cover/use category on which the climax or potential plant cover is composed principally of native grasses, grasslike plants, forbs, or shrubs suitable for grazing and browsing, and introduced forage species that are managed like rangeland. Rangeland includes lands re-vegetated naturally or artificially when routine management of that vegetation is accomplished mainly through manipulation of grazing. This term would include areas where introduced hardy and persistent grasses, such as crested wheatgrass, are planted and such practices as deferred grazing, burning, chaining, and rotational grazing are used, with little or no chemicals or fertilizer being applied. Grasslands, savannas, many wetlands, some deserts, and tundra are considered to be rangeland. Certain communities of low forbs and shrubs, such as mesquite, chaparral, mountain shrub, and pinyon-juniper, are also included as rangeland.

Rental agreement means an agreement where the participant will be paid annual rental payments for the length of the agreement to maintain and/or restore grassland functions and values under the Grassland Reserve Program.

Restoration means implementing any conservation practice (vegetative, management, or structural) that improves the values and functions of grassland (native and natural plant communities).

Restoration agreement means an agreement between the program participant and the United States Department of Agriculture to restore or improve the functions and values of grassland and shrubland.

Restored grassland means land that is to be converted back to grassland or shrubland.

Secretary means the Secretary of Agriculture.

Shrubland means land that the dominant plant species is shrubs, which are plants that are persistent, have woody stems, a relatively low growth habitat, and generally produces several basal shoots instead of a single bole.

Significant decline means a decrease of a species population to such an extent that it merits direct intervention to halt further decline, as determined by the NRCS State Conservationist in consultation with the State Technical Committee.

Similar function and value means plants that are alike in growth habitat, environmental requirements, and provide substantially the same ecological benefits.

State Technical Committee means a committee established by the Secretary of the United States Department of Agriculture in a State pursuant to 16 U.S.C. 3861.

USDA means the Chief, NRCS, in consultation with the Administrator, FSA or the NRCS State Conservationist in consultation with the FSA State Executive Director.

§ 1415.4 Program requirements.

(a) Only landowners may submit applications for easements. For rental agreements, the applicant must provide evidence of control of the property for the duration of the rental agreement.

(b) The easement and rental agreement shall require that the area be maintained in accordance with GRP goals and objectives for the duration of the term of the easement or rental agreement, including the conservation, protection, and restoration of the grassland functions and values.

(c) All participants in GRP will be required to implement a conservation plan approved by USDA to preserve the viability of the grassland enrolled into the program. The conservation plan will document the conservation values, characteristics, current and future use of the land, practices that may need to be applied along with a schedule for application, and a management plan.

(d) The easement and rental agreement shall grant USDA or its representatives a right of access to the easement and rental agreement area.

(e) Easement participants are required to convey title that is acceptable to the United States and provide consent or subordination agreements from each holder of a security or other interest in the land. The landowner shall warrant that the easement granted the United States is superior to the rights of all others, except for exceptions to the title that are deemed acceptable by the USDA.

(f) Easement participants are required to use a standard GRP easement developed by the Department. The easement shall grant all development rights, title, and interest in the easement area in order to protect grassland and other conservation values.

(g) The program participant must comply with the terms of the easement or rental agreement and comply with all terms and conditions of any associated restoration agreement.

(h) Easements and rental agreements will allow the following activities:

(1) Common grazing practices on the land in a manner that are consistent with maintaining the viability of natural grass and shrub species;

(2) Haying, mowing, or haying for seed production, except that such uses shall have certain restrictions determined appropriate by the NRCS State Conservationist to protect, during the nesting season, birds in the local area that are in significant decline or are conserved in accordance with Federal or State law; and

(3) Fire rehabilitation and construction of firebreaks, fences (excluding corrals), watering facilities, seedbed preparation and seeding, and any other facilitating practices, as determined by the USDA to protect and restore the grassland functions and values.

(i) Any activity that would disturb the surface of the land covered by the easement is prohibited except for common grazing management practices carried out in a manner consistent with maintaining the functions and values of grassland common to the local area, including fire rehabilitation and construction of firebreaks, construction of fences, and restoration practices.

(j) Contracts may be canceled without penalty or refund if the original participant dies, becomes incompetent, or is otherwise unavailable during the contract period.

(k) Participants may be able to convert rental agreements to an easement, providing the easement is for a longer duration than the rental agreement, funds are available, and the project meets conditions established by the USDA. Land cannot be enrolled in both a rental agreement option and an easement enrollment option at the same time. The rental agreement shall be deemed terminated the date the easement is recorded in the local land records office.

§ 1415.5 Land eligibility.

(a) GRP is available on privately owned lands, which include private and tribal land. Publicly-owned land is not eligible.

(b) Land shall be eligible for funding consideration if the NRCS State Conservationist determines that the land is:

(1) Grassland, land that contains forbs, or shrubs (including rangeland and pastureland); or

(2) The land is located in an area that has been historically dominated by grassland, forbs, or shrubs; and has potential to provide habitat for animal or plant populations of significant ecological value, as determined by the State Conservationist in consultation with the State Technical Committee and FSA, if the land is;

(i) Retained in the current use of the land; or

(ii) Restored to a natural condition.

(c) Incidental lands, in conjunction with eligible land, may also be considered for enrollment to allow for the efficient administration of an easement or rental agreement.

(d) Forty contiguous acres is the minimum acreage that will be accepted in the program. However, less than 40 acres may be accepted if the USDA, with advice from the State Technical Committee, determines that the enrollment of acreage meets the purposes of the program and grants a waiver. USDA, at the State level, may also establish a higher minimum acreage level. USDA will review any minimum acreage requirement to ensure, to the extent permitted by law, that this requirement does not unfairly discriminate against small farmers.

(e) Land will not be enrolled if the functions and values of the grassland are protected under an existing contract or easement. The land would become eligible when the existing contract expires or is terminated, and the grassland values and functions are no longer protected.

(f) Land on which gas, oil, earth, or other mineral rights exploration has been leased or is owned by someone other than the GRP applicant may be offered for participation in the program. However, if an applicant submits an offer for an easement project, USDA will assess the potential impact that the third party rights may have upon the grassland resources. USDA reserves the right to deny funding for any application where there are exceptions to clear title on any property.

§ 1415.6 Participant eligibility.

To be eligible to participate in GRP an applicant:

(a) Must be a landowner for easement participation or be a landowner or have general control of the eligible acreage being offered for rental agreement participation;

(b) Agree to provide such information to USDA that the Department deems necessary or desirable to assist in its determination of eligibility for program benefits and for other program implementation purposes;

(c) Meet the Adjusted Gross Income requirements in 7 CFR part 1400; and

(d) Meet the conservation compliance requirements found in 7 CFR part 12.

§ 1415.7 Application procedures.

(a) Any owner or operator or tenant of eligible land that meets the criteria set forth in § 1415.6 may submit an application through a USDA Service Center for participation in the GRP. Applications are accepted throughout the year.

(b) By filing an Application for Participation, the applicant consents to a USDA representative entering upon the land offered for enrollment for purposes of assessing the grassland functions and values, and for other activities that are necessary for the USDA to make an offer of enrollment. The applicant will be notified prior to a USDA representative entering upon their property.

(c) Applicants submit applications that identify the duration of the easement or rental agreement. Rental agreements may be for 10-years, 15-years, 20-years, or 30-years; easements may be for 30-years, permanent, or for the maximum duration authorized by State law.

§ 1415.8 Establishing priority for enrollment of properties.

(a) USDA, at the National level, will provide to USDA offices at the State level, broad national guidelines for establishing State specific project selection criteria.

(b) USDA, at the State level, with advice from the State Technical Committee, shall establish criteria to evaluate and rank applications for easement and rental agreement enrollment following the guidance established in paragraph (a) of this section.

(c) Ranking criteria will emphasize support for:

(1) Native and natural grassland;

(2) Protection of grassland from the threat of conversion;

(3) Support for grazing operations; and

(4) Maintain and improve plant and animal biodiversity.

(d) When funding is available, USDA at the State level will periodically select for funding the highest ranked applications based on applicant and land eligibility and the State-developed ranking criteria.

(e) States may utilize one or more ranking pools, including a pool for special project consideration such as establishing a pool for projects that receive restoration funding from non-USDA sources.

(f) The USDA, with advice from the State Technical Committee, may emphasize enrollment of unique grasslands or specific geographic areas of the State.

(g) The FSA State Executive Director and NRCS State Conservationist, with advice from the State Technical Committee will select applications for funding.

(h) If available funds are insufficient to accept the highest ranked application, and the applicant is not interested in reducing the acres offered to match available funding, USDA may select a lower ranked application that can be fully funded. Applicants may choose to change the duration of the easement or agreement or reduce acreage amount offered if the application ranking score is not reduced below that of the score of the next available application on the ranking list.

§ 1415.9 Enrollment of easements and rental agreements.

(a) Based on the priority ranking, USDA will notify applicants in writing of their tentative acceptance into the program for either rental agreement or conservation easement options. The participant has fifteen calendar days from the date of notification to sign and submit a letter of intent to continue. A letter of intent to continue from the applicant authorizes USDA to proceed with the enrollment process.

(b) An offer of tentative acceptance into the program does not bind the USDA to acquire an easement or enter into a rental agreement, nor does it bind the participant to convey an easement, enter into a rental agreement, or agree to restoration activities.

(c) For easement projects, land is considered enrolled after the landowner signs the intent to continue. For rental agreements, land is considered enrolled after a GRP contract is approved by USDA.

(d) USDA will present a contract to the participant, which will describe the easement or rental area; the easement terms, or rental terms and conditions; and other terms and conditions for participation that may be required by CCC.

(e) For easements, after the contract is executed by USDA and participant, USDA will proceed with development of the conservation plan and various acquisition activities, which may include conducting a survey of the easement, securing necessary subordination agreements, procuring title insurance, developing a baseline data report, and conducting other activities necessary to record the easement.

(f) Prior to execution by USDA and the participant of the contract, the USDA may withdraw its offer anytime due to lack of available funds, title concerns for easements, or other reasons. The offer to the participant shall be void if not executed by the participant within the time specified in an option to purchase agreement.

§ 1415.10 Compensation for easements and rental agreements.

(a) Compensation for easements will be based upon:

(1) The fair market value of the land less the grassland value of the land for permanent easements; and

(2) Thirty percent of the value determined in paragraph (a)(1) of this section for 30-year easements or for an easement for the maximum duration permitted under State law.

(b) For 10-, 15-, 20-, and 30-year rental agreements, the participant will receive not more than 75 percent of the grazing value in an annual payment for the length of the agreement.

(c) In order to provide for better uniformity among States, the FSA Administrator and NRCS Chief may review and adjust, as appropriate, State or other geographically based payment rates for rental agreements. NRCS State Conservationists may establish easement payment amounts on a site specific or geographic area basis.

(d) Easement or rental agreement payments received by participant shall be in addition to, and not affect, the total amount of payments that the participant is otherwise eligible to receive under other Federal laws.

(e) For easements, to minimize expenditures on individual appraisals and expedite program delivery, USDA may complete a programmatic appraisal to establish regional average market values and grazing values. The programmatic appraisals would remove the need to conduct appraisals on each parcel selected for funding.

§ 1415.11 Restoration agreements.

(a) Restoration agreements are only authorized to be used in conjunction with easements and rental agreements. NRCS, in consultation with the program participant, will determine if the grassland resources are adequate to meet the participant's objectives and the purposes of the program, or if a restoration agreement is needed. Such a determination will also be subject to the availability of funding. NRCS may condition participation in the program upon the execution of a restoration agreement depending on the condition of the grassland resources. When the functions and values of the grassland are determined adequate by NRCS, a restoration agreement will not be required. However, if a restoration agreement is required, NRCS will set the terms of the restoration agreement. The restoration agreement will identify conservation practices and measures necessary to improve the functions and values of the grassland. If the functions and values of the grassland decline while the land is subject to a GRP easement or rental agreement through no fault of the participant, the participant may enter into a restoration agreement at that time to improve the functions and values with USDA approval and fund availability.

(b) Eligible restoration practices include land management, vegetative, and structural practices and measures that will improve the grassland ecological functions and values on native and natural, and introduced plant communities. The NRCS State Conservationist, with advice from the State Technical Committee and in consultation with FSA, will determine the conservation practices, measures, payment rates, and cost-share percentages, not to exceed statutory limits, that will be available for restoration. A list of eligible practices will be available to the public. NRCS working through the local conservation district with the program participant will determine the terms of the restoration agreement. The conservation district may assist with determining eligible practices and approving restoration agreements. Restoration agreements will not extend past the date of a rental agreement or easement.

(c) All restoration practices and measures are eligible for cost sharing. Payments under GRP may be made to the participant of not more than 90 percent for the cost of carrying out conservation practices and measures on grassland and shrubland that has never been cultivated, and not more than 75 percent on restored grassland and shrubland on land that at one time was cultivated.

(d) Restoration activities are applicable to native and natural plant communities. When seeding is determined necessary for restoration, USDA will give priority to using native seed. However, when native seed is not available, or returning the land to native conditions is determined impractical by USDA, plant propagation using species that provide similar functions and values may be utilized.

(e) Cost-shared practices shall be maintained by the participant for the life of the practice. The life of the practice shall be consistent with other USDA cost shared or easement programs. Failure to maintain the practice will be dealt with under the terms of the restoration agreement and may involve repayment of the Federal cost-share.

(f) All conservation practices will be implemented in accordance with the NRCS Field Office Technical Guide.

(g) Technical assistance will be provided by NRCS, or an approved third party, as needed by the participant.

(h) Federal cost sharing shall be adjusted so that the combined cost share by Federal and State government or subdivision of a State government shall not exceed 100 percent of the total actual cost of the restoration. The participant cannot receive cost-share from more than one Federal cost-share program for the same conservation practice.

(i) Cost-share payments may be made only upon a determination by a qualified individual approved by the NRCS State Conservationist that an eligible practice has been established in compliance with appropriate standards and specifications.

(j) Identified practices may be implemented by the participant or other designee. Payments will not be made for practices applied prior to submitting an application to participate in the program.

(k) Cost-share payments will not be made for practices implemented or initiated prior to the approval of a rental agreement or easement acquisition unless a written waiver is granted by USDA at the State level prior to installation of the practice.

§ 1415.12 Modifications to easements and rental agreements.

(a) After an easement has been recorded, no modification will be made to the easement except by mutual agreement with Chief, NRCS, and the landowner.

(b) Easement modifications may only be made by the Chief, NRCS, after consulting with the Office of General Counsel. Minor modifications may be made by the NRCS State Conservationist in consultation with Office of General Counsel. Minor modifications are those that do not affect the substance of the conservation easement deed. Such modifications include, typographical errors, minor changes in legal descriptions as a result of survey or mapping errors, and address changes.

(c) Approved modifications will be made only in an amendment to an easement which is duly prepared and recorded in conformity with standard real estate practices, including requirements for title approval, subordination of liens, and recordation.

(d) The Chief, NRCS, may approve modifications on easements to facilitate the practical administration and management of the enrolled area so long as the modification will not adversely affect the grassland functions and values for which the land was acquired or other terms of the easement.

(e) NRCS State Conservationists may approve modifications for restoration agreements and conservation plans as long as the modifications do not affect the provisions of the easement or rental agreement and meets GRP program objectives.

(f) USDA may approve modifications on rental agreements to facilitate the practical administration and management of the enrolled area so long as the modification will not adversely affect the grassland functions and values for which the land was enrolled.

§ 1415.13 Transfer of land.

(a) Any transfer of the property prior to the participant's acceptance into the program shall void the offer of enrollment, unless at the option of the NRCS State Conservationist, in consultation with the FSA State Executive Director, an offer is extended to the new participant and the new participant agrees to the same easement or rental agreement terms and conditions.

(b) After acreage is accepted in the program, for easements with multiple payments, any remaining easement payments will be made to the original landowner unless USDA receives an assignment of proceeds.

(c) Future annual rental payments will be made to the successor participant.

(d) The new landowner or contract successor shall be held responsible for complying with the terms of the recorded easement or rental agreement and for assuring completion of all measures and practices required by the associated restoration agreement. Eligible cost-share payments shall be made to the new participant upon presentation that the successor assumed the costs of establishing the practices.

(e) With respect to any and all payments owed to landowners, the United States shall bear no responsibility for any full payments or partial distributions of funds between the original landowner and the landowner's successor. In the event of a dispute or claim on the distribution of cost-share payments, USDA may withhold payments without the accrual of interest pending an agreement or adjudication on the rights to the funds.

(f) The rights granted to the United States in an easement shall apply to any of its agents, successors, or assigns. All obligations of the landowner under an easement deed shall also bind the landowner's heirs, successors, agents, assigns, lessees, and any other person claiming under them.

(g) Rental agreements may be transferred to another landowner, operator or tenant that acquires an interest in the land enrolled in GRP. The transferee must be determined by USDA to be eligible to participate in GRP and must assume full responsibility under the agreement. USDA may require a participant to refund all or a portion of any financial assistance awarded under GRP if the participant sells or loses control of the land under a GRP rental agreement and the new owner or controller is not eligible to participate in the program or refuses to assume responsibility under the agreement.

§ 1415.14 Misrepresentation and violations.

(a) Contract violations:

(1) Contract violations, determinations, and appeals will be handled in accordance with the terms of the program contract or agreement and attachments thereto.

(2) A participant who is determined to have erroneously represented any fact affecting a program determination made in accordance with this part shall not be entitled to contract payments and must refund to USDA all payments, plus interest in accordance with 7 CFR part 1403.

(3) In the event of a violation of a rental agreement or any contract directly involving the participant, the participant shall be given notice and an opportunity to voluntarily correct the violation within 30-days of the date of the notice, or such additional time as CCC may allow.

(b) Easement violations: Easement violations are handled under the terms of the easement. Upon notification of the participant, the USDA reserves the right to enter upon the easement area at any time to remedy deficiencies or violations. Such entry may be made when USDA deems such action necessary to protect important grassland and shrubland functions and values or other rights of the United States under the easement. The participant shall be liable for any costs incurred by the United States as a result of the participant's negligence or failure to comply with easement, rental agreement, or contractual obligations.

(c) USDA may require the participant to refund all or part of any payments received by the participant or pay liquidated damages as may be required under the program contract or agreement.

(d) In addition to any and all legal and equitable remedies available to the United States under applicable law,

USDA may withhold any easement payment, and cost-share payments owing to the participant at any time there is a material breach of the easement covenants, rental agreement, or any contract. Such withheld funds may be used to offset costs incurred by the United States in any remedial actions or retained as damages pursuant to court order or settlement agreement.

(e) Under an easement, the United States shall be entitled to recover any and all administrative and legal costs, including attorney's fees or expenses, associated with any enforcement or remedial action.

§ 1415.15 Payments not subject to claims.

Any cost-share, rental payment, or easement payment or portion thereof due any person under this part shall be allowed without regard to any claim or lien in favor of any creditor, except agencies of the United States Government.

§ 1415.16 Assignments.

(a) Any person entitled to any cash payment under this program may assign the right to receive such cash payments, in whole or in part.

(b) If a participant that is entitled to a payment dies, becomes incompetent, or is otherwise unable to receive the payment, or is succeeded by another person who renders or completes the required performance, others may be eligible to receive payment in such a manner as USDA determines is fair and reasonable in light of all the circumstances.

§ 1415.17 Delegation to third parties.

(a) USDA may permit an approved private conservation or land trust organization, State or other Federal agency to administer an easement with the consent or written request of the landowner. Rental agreements will not be delegated to private organizations, State, or other Federal agencies.

(b) USDA will have the right to conduct periodic inspections and enforce the easement and associated restoration agreement for any easements administered pursuant to this section.

(c) The private organization, State, or other Federal agency shall assume the costs incurred in administering and enforcing the easement, including the costs of restoration or rehabilitation of the land to the extent that such restoration or rehabilitation is above and beyond that required by the GRP conservation plan and restoration agreement. Any additional restoration must be consistent with the purposes of the easement.

(d) A private organization, State, or other Federal agency that seeks to administer and enforce an easement shall apply to the NRCS State Conservationist for approval. The State Conservationist shall consult with FSA State Executive Director prior to approval.

(e) For a private organization to administer and enforce an easement, the private organization must be organized as required by 28 U.S.C. 501(c)(3) of the Internal Revenue Code of 1986 or be controlled by an organization described in section 23 U.S.C. 509(a)(2) of that code. In addition, the private organization must provide evidence to USDA that it has:

(1) Relevant experience necessary to administer grassland and shrubland easements;

(2) A charter that describes the commitment of the private organization to conserving ranchland, agricultural land, or grassland for grazing and conservation purposes;

(3) The human and financial resources necessary, as determined by the Chief, NRCS, to effectuate the purposes of the charter; and

(4) Sufficient financial resources to carry out easement administrative and enforcement activities.

(f) If a private organization is terminated, withdraws from the agreement to administer the easement, or the landowner submits a request in writing to terminate such agreement, the USDA will assume the responsibility upon receiving such formal notice from the organization or the landowner. Subsequent agreements for easement management with other approved private, nonprofit organizations could be entered into at the request of the landowner with approval from the NRCS State Conservationist. If the owner and the new organization fail to notify the NRCS State Conservationist of the reassignment within 30 days of termination, the easement shall revert to the control of NRCS.

§ 1415.18 Appeals.

(a) Applicants or participants may appeal decisions regarding this program in accordance with 7 CFR parts 11, 614, and 780.

(b) Before a person may seek judicial review of any action taken under this part, the person must exhaust all administrative appeal procedures set forth in paragraph (a) of this section.

§ 1415.19 Scheme or device.

(a) If it is determined by the Department that a participant has employed a scheme or device to defeat the purposes of this part, any part of any program payment otherwise due or paid such participant during the applicable period may be withheld or be required to be refunded with interest thereon, as determined appropriate by the Department.

(b) A scheme or device includes, but is not limited to, coercion, fraud, misrepresentation, depriving any other person of payments for cost-share practices or easements for the purpose of obtaining a payment to which a person would otherwise not be entitled.

(c) A participant who succeeds to the responsibilities under this part shall report in writing to the Department any interest of any kind in enrolled land that is held by a predecessor or any lender. A failure of full disclosure will be considered a scheme or device under this section.

§ 1415.20 Confidentiality.

Appraisals are considered confidential information and are not distributed. The regulations in this part provide that any appraisals, market analysis, or supporting documentation that may be used by USDA in determining property value are considered confidential information, and shall only be disclosed as determined at the sole discretion of FSA and NRCS in accordance with applicable law.

Signed at Washington, DC on May 13, 2004.

Bruce I. Knight,

Vice President, Commodity Credit Corporation and Chief, Natural Resources Conservation Service.

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NUCLEAR REGULATORY COMMISSION

10 CFR Chapter I

Regulatory Analysis Guidelines: Final Criteria for the Treatment of Individual Requirements in a Regulatory Analysis

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory analysis guidelines.

SUMMARY: The Nuclear Regulatory Commission (NRC) is issuing its final criteria for the treatment of individual requirements in a regulatory analysis, because aggregating or "bundling" different requirements in a single regulatory analysis could potentially mask the inclusion of an individual requirement that is not cost-justified. As a result of these new criteria, the NRC will issue Revision 4 of its Regulatory Analysis Guidelines, NUREG/BR–0058 in the near future.

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SUPPLEMENTARY INFORMATION:

I. Background

The NRC usually performs a regulatory analysis for an entire rule in evaluating a proposed regulatory initiative to determine if the rule is cost-justified. External stakeholders from the nuclear power industry raised concerns that bundling different requirements in a single regulatory analysis can potentially mask the inclusion of an individual requirement when the net benefit from one of the requirements supports a second requirement that is not cost-justified.

In order to address this concern, the NRC published proposed criteria for the treatment of individual requirements in a regulatory analysis for comment on April 18, 2003 (68 FR 19162).

II. Comments on the Proposed Criteria

After publishing its proposed criteria for the treatment of individual requirements in a regulatory analysis, the NRC received two sets of comments: one set from the Nuclear Energy Institute (NEI), an organization responsible for establishing unified nuclear industry policy on matters affecting the nuclear energy industry and the second from the Nuclear Regulatory Services Group (NRSG), a consortium of power reactor licensees.

In general, NEI states that the NRC's proposed criteria do not adequately incorporate the relevant Commission guidance on this issue and that the public comments made at a public meeting on March 21, 2002, were not taken into account by the NRC staff. The two areas of concern to NEI were the NRC's criteria necessary to evaluate the bundling of individual requirements and the NRC's guidance on using subjective judgment in making bundling decisions.

The law firm of Ballard Spahr Andrews & Ingersoll, LLP, also submitted a set of comments on behalf of the Nuclear Regulatory Services Group (NRSG). NRSG calls the proposed criteria "a positive step in providing detailed guidance in this area for the first time" and suggested some refinements of the criteria so that "all proposed new regulatory requirements receive a proper analysis of their costs and benefits."

Comment: NEI's initial comment was that on "* * * rules that provide risk-informed voluntary alternatives to current regulations, an individual requirement should have to be cost-justified *and* integral to the purpose of the rule rather than [NRC's position that it be] cost-justified *or* integral to the purpose of the rule." NEI claims that the NRC's criteria "* * * would be a significant disincentive to implementation of voluntary alternative requirements developed by industry groups because of the lack of scrutable guidance regarding the addition of individual requirements by the NRC staff."

Response: The NRC believes that its position is correct with respect to the need for each criterion to be considered as a basis for bundling. NRC's position may be clearer if one considers requirements that are not necessary to a rule as enhancements. Then, if one uses NEI's criteria of requiring both conditions, *i.e.*, being both cost-beneficial and necessary, no enhancements to a rule would be tolerated or should even be considered because an enhancement is not necessary to the purpose of the rule. But a fundamental principle of cost-benefit methodology is to select the alternative that achieves the largest net benefit, which could conceivably be an alternative with enhancements. Thus, NEI's position is tantamount to ignoring the cost-benefit implications of any requirement that is not necessary to meet the objective of the rule. Under NEI's approach, cost-beneficial relaxations could not be included in a rulemaking if they were not necessary to the purpose of the rule.

Alternatively, the NRC's position allows for the selection of the alternative with the largest net benefit. Also, the NRC does not believe that NEI has demonstrated how the proposed criteria would be a "significant disincentive" to the implementation of voluntary alternative requirements developed by industry groups. As long as the voluntary alternatives are shown to be cost-beneficial and result in no decrease in safety from the NRC's proposed requirement, there should not be a problem.

Comment: NEI notes that the phrase "integral to the purpose of the rule," used both in a Staff Requirements Memorandum (SRM), dated January 19, 2001, and in the February 2002 preliminary criteria, was subsequently dropped from the proposed criteria. The phrase relates to whether a proposed requirement can be "integral to the purpose of the rule" if the individual requirement is not cost-beneficial, not required for compliance, and not required for adequate protection. NEI's position is that the phrase should be included in the NRC's final criteria.

Response: The NRC replaced the phrase "integral to the purpose of the rule" as stated in the 2002 criteria, with "necessary to the purpose of the rule" because NRC believes that "necessary" conveys a clearer meaning. As discussed in both the proposed and final criteria papers, a requirement is necessary to the purpose of the rule if it is needed for the regulatory initiative to resolve the problems and concerns, and meet the stated objectives that are the focus of the regulatory initiative.

Comment: NEI believes that NRC analysts need more guidance on making bundling judgments. They claim that because NRC's guidance is confusing and provides no meaningful standard, it is easier for the NRC staff to aggregate requirements without explanation.

Response: The NRC's guidance is consistent with that provided in the Office of Management and Budget's (OMB) Circular A–4, "Regulatory Analysis" issued September 17, 2003, in which OMB recognizes the need to examine individual provisions separately and goes on to state:

> Analyzing all possible combinations of provisions is impractical if the number is large and interaction effects are widespread. You need to use judgment to select the most significant or relevant provisions for such analysis. You are expected to document all the alternatives that were considered in a list or table and which were selected for emphasis in the main analysis.

The OMB circular recognizes that judgment must be used for such analyses. The level of analysis needs to be tempered by many factors such as controversiality, complexity, magnitude of consequences, and the like. Also, each regulatory analysis could possibly have unique features that would likely affect the type of analysis that should be done. Further, NRC final guidance will include reference to the OMB circular and the NRC does not believe additional guidance is needed.

Comment: NEI claims that the use of an analyst's judgment as proposed by the NRC relies too much on NRC management review and public comment. They state: "The burden should be on the NRC to provide sufficient information to evaluate regulatory analysis decisions."

Response: Regulatory analyses are well founded and rely on sound judgments. This is done through peer review, management oversight, review of public comments, etc., and reliance on the analyst's judgment which is central to the regulatory analysis process. The NRC believes that its guidance ensures that its regulatory

analyses will provide sufficient information for the public to evaluate regulatory decisions and makes the process both "meaningful and scrutable."

Comment: NEI quotes the SRM calling for regulatory analyses to be "meaningful and scrutable" and claims that the analysis cannot meet this requirement unless there is some documented basis for disaggregation.

Response: The NRC believes that regulatory analyses prepared under the revised guidelines are "meaningful and scrutable," especially given that the guidance is consistent with that provided by OMB on this issue. The reason for disaggregation would be discussed in each regulatory analysis on a case-by-case basis.

Comment: NEI states that the proposed criteria are inconsistent with the other detailed guidance on the treatment of values and impacts contained in NUREG/BR/0058, as currently written.

Response: The NRC disagrees with this comment and believes this final guidance clarifies and supports existing guidance in NUREG/BR–0058. Further, the NRC believes this new guidance is directly relevant to the current discussion on the identification of alternatives. This guidance considers the scope of requirements and the variability in physical and technical requirements as bases for defining alternatives. This bundling issue should be viewed as an extension or clarification of that discussion.

Comment: NEI states with respect to bundling that the "proposed criteria do not establish a common understanding of new requirements, do not establish a scrutable process for making regulatory decisions about voluntary initiatives, and do not provide sufficient documentation to inform future decisions."

Response: The NRC reiterates its position that "bundling" guidance sets forth in detail how an analyst should handle the "bundling" issue and is also consistent with the cited OMB guidance. The NRC also believes that regulatory analyses and supporting documentation prepared under the revised guidance will be sufficient to provide documentation which may be reviewed to inform future decisions. The NRC notes that regulatory analyses are prepared as tools to support reasoned decision making and public understanding of the NRC's decisions; in this regard, the NRC believes that the revised guidelines achieve these objectives.

Comment: NEI requests that the NRC defer its final decision on these criteria until previous comments are "properly addressed."

Response: Sufficient information was not provided to defer a final decision. The NRC maintains that it has properly addressed all public comments. Also, the Advisory Committee on Reactor Safeguards has stated in a July 17, 2003, letter from its Chairman, Mario V. Bonaca, to the Chairman of the Commission, that the NRC staff's criteria "are appropriate and responsive to the Commission's direction."

Comment: NRSG stated that the NRC should require separate analysis of individual requirements to the extent practicable. They went on to state "that disaggregation of requirements should be the preferred approach, with the burden on the NRC to justify why separate analysis of individual requirements is not appropriate in a given case."

Response: The NRC acknowledges that, for the purposes of developing an overall cost estimate of a regulatory initiative, the analyst should obtain separate cost estimates for each individual requirement to the extent practical. This is because it is the most logical model for developing an overall cost estimate, namely a bottom up approach. Further, the NRC agrees that cost-benefit analyses of individual requirements that are related (but not necessary) to the overall regulatory initiative need to be considered in reaching a sound regulatory decision. However, it is important to remember that the underlying purpose of a regulatory analysis is to provide decision makers with a tool for choosing between options or alternatives. When a regulatory initiative has a number of discreet, yet necessary requirements, the decision maker's choice is not whether to include or exclude necessary individual requirements but, rather, whether or not to enact the initiative as a whole. Therefore, the separate analyses of necessary individual requirements cannot contribute to this decision.

Further, as stated in the proposed criteria, published for public comment in the **Federal Register** on April 18, 2003 (68 FR 19162): "Specifically, this guidance states that a decision on the level of disaggregation needs to be tempered by considerations of reasonableness and practicality, and that a more detailed disaggregation would only be appropriate if it produces substantially different alternatives with potentially meaningful results." This implies that the analyst must be able to demonstrate that any aggregation in the analysis would not result in different conclusions of the analysis. Therefore, the NRC still does not believe that disaggregation in all cases should be the preferred approach and stands by the position stated in the proposed criteria. As stated in the guidance, "the NRC does not believe that there should be a general requirement for a separate analysis of each individual requirement of a rule. This could lead to unnecessary complexities." Also, NRC believes that its guidance is consistent with OMB Circular A–4, cited above.

Comment: NRSG states that if, according to the criteria, an individual requirement must be both "related" to the stated objective of the regulatory initiative and be "cost-beneficial," then the NRC should clarify what it means by "cost-beneficial." The commenter also states that the criteria for the treatment of any individual requirement must be consistent with the standards of the backfitting rule. Under the backfit rule, any new requirement that is a backfit must be shown to be cost-justified and produce a "substantial increase" in overall safety. Lastly, their final two points in this section are in agreement with the NRC criteria. First, the commenter agrees with the NRC that in "cases where a new backfit requirement is being considered for inclusion in a voluntary alternative, to current regulations * * * NRC should consider imposing such a new requirement, if justified under the standards of Section 50.109, through the normal disciplined backfitting process, * * * rather than merely including it in a voluntary-alternative rule." Second, NRSG "agree(s) with the NRC position that if an individual backfit requirement is not related to the objective of the regulatory initiative * * *, the "requirement must be addressed and justified as a backfit separately.'"

Response: For the most part, the NRC agrees with these comments. With respect to the NRC's meaning of "cost-beneficial" in the situation discussed by the commenter, the NRC means that the regulatory initiative results in a larger net benefit than would accrue to an action without that requirement. Further, with respect to the backfit rule, the NRC position is that when an individual requirement is related to the stated regulatory objective, the individual requirement should be cost-justified, and the overall regulatory initiative should constitute a substantial increase in the public health and safety.

Comment: NRSG stated that there should be further guidance on backfitting issues related to the American Society of Mechanical Engineers (ASME) Code. Specifically, they state:

NRC's guidance should allow the NRC discretion to perform a cost-benefit analysis of individual new requirements contained in later editions of Section XI before they are incorporated wholesale into Section 50.55a. If the NRC finds that individual new requirements of later Code editions are not cost-beneficial for some or all plants, the NRC should screen out those new individual requirements in accordance with the standards of the backfitting rule.

Response: The Commission's policy regarding Inservice Inspection (ISI) requirements is to assure the integrity of the reactor coolant system (RCS) boundary and containment as they relate to defense-in-depth considerations, that do not lend themselves to cost-benefit analyses. Further, in this specific instance, cost-benefit analyses are not well suited to determine if new requirements that address aging of components are appropriate because of the many uncertainties associated with the effects of aging.

When the Commission formulated its policy, the then Chairman stated that: "Both the ASME and the ACRS have strongly urged that the Commission maintain the current updating requirement" and that—

ASME asserts that the failure of the NRC to incorporate later editions of the Code in the requirements, absent justification under a backfit analysis, would serve to undermine ASME because of the disincentive of volunteers to engage themselves in an ASME process that will not necessarily affect operating plants. Moreover, because some states routinely establish requirements based on current ASME codes, the acceptance of the staff's approach would create the anomaly that non-nuclear facilities might be required to conform to more modern codes than nuclear facilities.

The Chairman also indicated he was aware "that industry participates in the development of the ASME codes and that costs are considered in the amendment process. Thus, although the revisions may not be analyzed with the rigor required by our backfit analysis, the costs and benefits are implicitly weighed."

Another Commissioner commented:

10 CFR 50.109 has served the NRC, our licensees, and our stakeholders well, and thus, my decision to not subject ASME Code updates to its backfit provisions was made only after I carefully considered how the staff's recommended option should exacerbate the complexity, inconsistency, and program divergence associated with our current update process. My decision also came after considering the diverse makeup of the ASME members that produce Code changes and the consensus process they use. * * * I believe that considerations of increased safety versus cost are implicit in the ASME consensus process.

In sum, NRSG's suggested approach is inconsistent with the Commission's previous guidance to the staff.

III. Final Criteria

In evaluating a proposed regulatory initiative, the NRC usually performs a regulatory analysis for the entire rule to determine whether or not it is cost-justified. However, aggregating or "bundling" different requirements in a single analysis could potentially mask the inclusion of an unnecessary individual requirement. In the case of a rule that provides a voluntary alternative to current requirements, the net benefit from the relaxation of one requirement could potentially support a second unnecessary requirement that is not cost-justified. Similarly, in the case of other types of rules, including those subject to backfit analysis,[1] the net benefit from one requirement could potentially support another requirement that is not cost-justified.[2]

Therefore, when analyzing and making decisions about regulatory initiatives that are composed of individual requirements, the NRC must determine if it is appropriate to include each individual requirement. Clearly, in certain instances, the inclusion of an individual requirement is necessary. This would be the case, for example, when the individual requirement is needed for the regulatory initiative to resolve the problems and concerns and meet the stated objectives[3] that are the focus of the regulatory initiative. Even though inclusion of individual requirements is necessary in this case, the analyst should obtain separate cost estimates for each requirement, to the extent practical, in deriving the total cost estimate presented for the aggregated requirements.

However, there will also be instances in which the individual requirement is not a necessary component of the regulatory initiative, and thus the NRC will have some discretion regarding its inclusion. In these circumstances, the NRC should adhere to the following guideline:

If the individual requirement is related (*i.e.*, supportive but not necessary) to the stated objective of the regulatory initiative, it should be included only if its overall effect is to make the bundled regulatory requirement more cost-beneficial. This would involve a quantitative and/or qualitative evaluation of the costs and benefits of the regulatory initiative with and without the individual requirement included, and a direct comparison of those results.[4]

In applying this guideline, the NRC will need to separate out the discrete requirements in order to evaluate their effect on the cost-benefit results. In theory, each regulatory initiative could include several discretionary individual requirements and each of those discretionary requirements could be comprised of many discrete steps, in which each discrete step could be viewed as a distinct individual requirement. This raises the potential for a large number of iterative cost-benefit comparisons, with attendant analytical complexities. Thus, considerable care needs to be given to the level of disaggregation that one attaches to a discretionary requirement.

In general, a decision on the level of disaggregation needs to be tempered by considerations of reasonableness and practicality. For example, more detailed disaggregation is only appropriate if it produces substantively different alternatives with potentially meaningful implications on the cost-benefit results. Alternatively, individual elements that contribute little to the overall costs and benefits and are noncontroversial may not warrant much, if any, consideration. In general, it will not be necessary to provide additional documentation or analysis to explain how this determination is made, although such a finding can certainly be challenged at the public comment stage.[5] For further guidance, the analyst is referred to principles regarding the appropriate level of detail to be included in a

[1] "The Regulatory Analysis Guidelines of the U.S. Nuclear Regulatory Commission," (NUREG/BR–0058) have been developed so that a regulatory analysis that conforms to these Guidelines will meet the requirements of the backfit rule and the provisions of the CRGR Charter.

[2] This discussion does not apply to backfits that the Commission determines qualify under one of the exceptions in 10 CFR 50.109(a)(4). Those types of backfits require a documented evaluation rather than a backfit analysis, and cost is not a consideration in deciding whether or not the exceptions are justified (though costs may be considered in determining how to achieve a certain level of protection).

[3] The stated objectives of the rule are those stated in the preamble (also known as the Statement of Considerations) of the rule.

[4] There may be circumstances in which the analyst considers including an individual requirement that is unrelated to the overall regulatory initiative. For example, an analyst may consider combining certain unrelated requirements as a way to eliminate duplicative rulemaking costs to the NRC and increase regulatory efficiency. Under these circumstances, it would be appropriate to combine these discrete individual requirements if the overall effect is to make the regulatory initiative more cost-beneficial. In those instances in which the individual requirement is a backfit, the requirement must be addressed and justified as a backfit separately. These backfits are not to be included in the overall regulatory analysis of the remainder of the regulatory initiative.

[5] See NUREG/BR–0053, Revision 5, March 2001, "U.S. Nuclear Regulatory Commission Regulations Handbook," Section 7.9, for discussion of how to treat comments.

regulatory analysis, as discussed in Chapter 4 of the "Regulatory Analysis Guidelines of the U.S. Nuclear Regulatory Commission."

In some cases, an individual requirement that is being considered for inclusion in a voluntary alternative to current regulations may be justifiable under the backfit criteria. In these cases the individual requirement is both cost-justified and provides a substantial increase in the overall protection of the public health and safety or the common defense and security. If so, the NRC should consider imposing the individual requirement as a backfit affecting all plants to which it applies, rather than merely including it in a voluntary-alternative rule affecting only those plants where the voluntary alternative is adopted.

A special case involves the NRC's periodic review and endorsement of consensus standards, such as new versions of the American Society of Mechanical Engineers (ASME) codes. These NRC endorsements can typically involve hundreds, if not thousands, of individual provisions. Thus, evaluating the benefits and costs of each individual provision in a regulatory analysis can be a monumental task. Further, the value gained by performing such an exercise appears limited. These consensus standards tend to be noncontroversial and have already undergone extensive external review and been endorsed by industry. Although regulatory actions endorsing these consensus standards must be addressed in a regulatory analysis, it is usually not necessary for the regulatory analysis to address the individual provisions of the consensus standards.

The NRC believes this is appropriate for several reasons:

(1) It has been longstanding NRC policy to incorporate later versions of the ASME Code into its regulations; and thus, licensees know when receiving their operating licenses that updating the ASME Code is part of the regulatory process;

(2) Endorsement of the ASME Code is consistent with the National Technology Transfer and Advancement Act, inasmuch as the NRC has determined that there are sound regulatory reasons for establishing regulatory requirements for design, maintenance, inservice inspection and inservice testing by rulemaking; and

(3) These consensus standards undergo significant external review and discussion before being endorsed by the NRC.

Some aspects of these regulatory actions endorsing consensus standards are backfits which must be addressed and justified individually. For example, NRC endorsement (incorporation by reference) of the ASME Boiler and Pressure Vessel Code (BPV) provisions on inservice inspection and inservice testing, and the ASME Operations and Maintenance (OM) Code, are not ordinarily considered backfits, because it has been the NRC's longstanding policy to incorporate later versions of the ASME codes into its regulations. However, under some circumstances the NRC's endorsement of a later ASME BPV or OM Code is treated as a backfit. The application of the backfit rule to ASME code endorsements is discussed in the Appendix below. Aside from these backfits, these regulatory analyses should include consideration of the major features (*e.g.*, process changes, recordkeeping requirements) of the regulatory action which should then be aggregated to produce qualitative or quantitative estimates of the overall burdens and benefits in order to determine if the remainder of the action is justified.

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

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix

Guidance on Backfitting Related to ASME Codes

10 CFR 50.55a requires nuclear power plant licensees to construct ASME Boiler and Pressure Vessel Code (BPV Code) Class 1, 2, and 3 components under the rules provided in Section III, Division 1, of the ASME BPV Code; inspect Class 1, 2, 3, Class MC, and Class CC components under the rules provided in Section XI, Division 1, of the ASME BPV Code; and test Class 1, 2, and 3 pumps and valves under the rules provided in the ASME Code for Operation and Maintenance of Nuclear Power Plants (OM Code). From time to time, the NRC amends 10 CFR 50.55a to incorporate by reference later editions and addenda of: Section III, Division 1, of the ASME BPV Code; Section XI, Division 1, of the ASME BPV Code; and the ASME OM Code.

Section A. Incorporation by Reference of Later Editions and Addenda of Section III, Division 1 of ASME BPV Code

Incorporation by reference of later editions and addenda of Section III, Division 1, of the ASME BPV Code is prospective in nature. The later editions and addenda do not affect a plant that has received a construction permit or an operating license, or a design that has been approved because the edition and addenda to be used in constructing a plant are, by rule, determined on the basis of the date of the construction permit and are not changed, except voluntarily by the licensee. Thus, incorporation by reference of a later edition and addenda of Section III, Division 1, does not constitute a "backfitting" as defined in § 50.109(a)(1).

Section B. Incorporation by reference of later editions and addenda of Section XI, Division 1, of the ASME BPV and OM Codes

Incorporation by reference of later editions and addenda of Section XI, Division 1, of the ASME BPV Code and the ASME OM Code affect the ISI and IST programs of operating reactors. However, the backfit rule generally does not apply to incorporation by reference of later editions and addenda of the ASME BPV (Section XI) and OM codes for the following reasons—

(1) The NRC's longstanding policy has been to incorporate later versions of the ASME codes into its regulations; thus, licensees know when receiving their operating licenses that such updating is part of the regulatory process. This is reflected in § 50.55a which requires licensees to revise their in-service inspection (ISI) and in-service-testing (IST) programs every 120 months to the latest edition and addenda of Section XI of the ASME BPV Code and the ASME OM Code incorporated by reference into § 50.55a that is in effect 12 months before the start of a new 120-month ISI and IST interval. Thus, when the NRC endorses a later version of a code, it is implementing this longstanding policy.

(2) ASME BPV and OM codes are national consensus standards developed by participants with broad and varied interests, in which all interested parties (including the NRC and utilities) participate. This consideration is consistent with both the intent and spirit of the backfit rule (*i.e.*, the NRC provides for the protection of the public health and safety, and does not unilaterally imposed undue burden on applicants or licensees).

(3) Endorsement of these ASME codes is consistent with the National Technology Transfer and Advancement Act, inasmuch as the NRC has determined that there are sound regulatory reasons for establishing regulatory requirements for design, maintenance, inservice inspection and inservice testing by rulemaking.

Section C. Other Circumstances Where the NRC Does Not Apply the Backfit Rule to the Endorsement of a Later Code

Other circumstances where the NRC does not apply the backfit rule to the endorsement of a later code are as follows—

(1) When the NRC takes exception to a later ASME BPV or OM code provision, and merely retains the current existing requirement, prohibits the use of the later code provision, or limits the use of the later code provision, the backfit rule does not apply because the NRC is not imposing new requirements. However, the NRC provides the technical and/or policy bases for taking exceptions to the code in the Statement of Considerations for the rule.

(2) When an NRC exception relaxes an existing ASME BPV or OM code provision but does not prohibit a licensee from using the existing code provision.

Section D. Endorsement of Later ASME BPV or OM Codes That Are Considered Backfits

There are some circumstances when the NRC considers it appropriate to treat as a backfit the endorsement of a later ASME BPV or OM code—

(1) When the NRC endorses a later provision of the ASME BPV or OM code that takes a substantially different direction from the currently existing requirements, the action is treated as a backfit. An example was the NRC's initial endorsement of Subsections IWE and IWL of Section XI, which imposed containment inspection requirements on operating reactors for the first time. The final rule dated August 8, 1996 (61 FR 41303), incorporated by reference in § 50.55a the 1992 Edition with the 1992 Addenda of IWE and IWL of Section XI to require that containments be routinely inspected to detect defects that could compromise a containment's structural integrity. This action expanded the scope of § 50.55a to include components that were not considered by the existing regulations to be within the scope of ISI. Because those requirements involved a substantially different direction, they were treated as backfits, and justified under the standards of 10 CFR 50.109.

(2) When the NRC requires implementation of later ASME BPV or OM code provision on an expedited basis, the action is treated as a backfit. This applies when implementation is required sooner than it would be required if the NRC simply endorsed the Code without any expedited language. An example was the final rule dated September 22, 1999 (64 FR 51370), which incorporated by reference the 1989 Addenda through the 1996 Addenda of Section III and Section XI of the ASME BPV Code, and the 1995 Edition with the 1996 Addenda of the ASME OM Code. The final rule expedited the implementation of the 1995 Edition with the 1996 Addenda of Appendix VIII of Section XI of the ASME BPV Code for qualification of personnel and procedures for performing ultrasonic (UT) examinations. The expedited implementation of Appendix VIII was considered a backfit because licensees were required to implement the new requirements in Appendix VIII before the next 120-month ISI program inspection interval update. Another example was the final rule dated August 6, 1992 (57 FR 34666), which incorporated by reference in § 50.55a the 1986 Addenda through the 1989 Edition of Section III and Section XI of the ASME BPV Code. The final rule added a requirement to expedite the implementation of the revised reactor vessel shell weld examinations in the 1989 Edition of Section XI. Imposing these examinations was considered a backfit because licensees were required to implement the examinations before the next 120-month ISI program inspection interval update.

(3) When the NRC takes an exception to an ASME BPV or OM code provision and imposes a requirement that is substantially different from the current existing requirement as well as substantially different than the later code. An example of this is presented in the portion of the final rule dated September 19, 2002, in which the NRC adopted dissimilar metal piping weld UT examination coverage requirements from those in the ASME code.

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SMALL BUSINESS ADMINISTRATION

13 CFR Parts 121, 124, 125, and 134

RIN 3245–AE92

Small Business Size Regulations; Rules of Procedure Governing Cases Before the Office of Hearings and Appeals

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: This final rule amends the U.S. Small Business Administration's (SBA's) small business size regulations and the regulations applying to appeals of size determinations. In particular, this rule amends the definitions of affiliation and employees. It also makes procedural and technical changes to cover programs such as the SBA's HUBZone Program and the government-wide Small Disadvantaged Business Program. Further, the rule codifies several long-standing precedents of the SBA's Office of Hearings and Appeals and clarifies the jurisdiction of that office.

DATES: *Effective Date:* The rule is effective on June 21, 2004. *Applicability Date:* These amendments apply to all solicitations issued on or after the effective date, as well as all applications for financial or other assistance pending as of or submitted to the SBA on or after the effective date.

FOR FURTHER INFORMATION CONTACT: Gary Jackson, Assistant Administrator, Office of Size Standards, (202) 205–6464 or *Gary.Jackson@sba.gov*.

SUPPLEMENTARY INFORMATION: On November 22, 2002, the U.S. Small Business Administration (SBA or Agency) published in the **Federal Register**, 67 FR 70339, a proposed rule to amend its regulations governing size. The SBA's size regulations (13 CFR part 121) are used to determine eligibility for all SBA and Federal programs that require an entity to be a small business concern (SBC).

In general, the SBA's size standards are based on either average annual receipts or number of employees, depending on the industry. When measuring a concern's size, the receipts or employees of affiliated concerns are included. This final rule modifies the definitions of affiliation and number of employees. In addition, the rule amends 13 CFR part 134 and clarifies the jurisdiction of the SBA's Office of Hearings and Appeals (OHA).

Section-by-Section Analysis of Comments

The SBA received two comments on its proposal to amend § 121.102 and add a new paragraph (d) that would recognize that there currently exists an internal Size Policy Board at the SBA responsible for making recommendations to the Administrator on size standards, other size eligibility requirements, and size protest procedures. One commenter concurred with the proposal to recognize the size policy board, while another commenter noted a typographical error in the paragraph numbering. Upon further deliberation, the SBA has decided not to adopt this rule as proposed. The SBA believes that the make-up and utilization of a Size Policy Board or other means to effect size policy is an internal matter, and need not be spelled out in the regulations. The SBA's current organizational structure ensures that size standard issues are considered by all appropriate officials in the Agency.

The SBA also proposed amending the definition of affiliation set forth at § 121.103. The proposed rule provided that control may be affirmative or negative, set forth an example of negative control, stated that control may be exercised indirectly through a third party, and stated that affiliation may be found under the totality of circumstances even though no single factor is sufficient to constitute affiliation. The SBA received several comments on these proposed changes, including comments supporting the incorporation of certain provisions previously contained in the regulations to provide clearer guidance regarding the application of the affiliation rules.

The SBA received one comment regarding § 121.103(a)(6), which provides that when determining the concern's size, the SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates, regardless of whether the affiliates are organized for profit. The commenter stated that this regulation, along with § 121.104(d), does not explain how to aggregate and then average the receipts or employees of a concern's affiliates. The commenter explained that there are three different ways to calculate an average and with each, a different answer is obtained.

In response to this comment, the SBA has amended § 121.104 (receipts) and § 121.106 (employees) to explain how to

calculate receipts and employees of affiliates. The amended language describes the SBA's historical practice of separately calculating the average annual receipts and average number employees for the business concerns and each affiliate and then aggregating them together. For example, a business concern with an average of 75 employees is added to the 20 employee average of an affiliate to arrive at an average number of employees of 95. This is not a change in policy, but merely more fully explains current policy.

The SBA also proposed amending § 121.103(b)(2) to clarify the exception to affiliation for Indian tribes, Alaska Native Corporations (ANCs), Community Development Corporations (CDCs) and Native Hawaiian Organizations (NHOs). The proposed rule specified that the exception applies whether the tribe, ANC, CDC or NHO owns the concern whose size is at issue directly, or through another entity, which is wholly-owned by the tribe, ANC, CDC or NHO. The proposed rule also provided that affiliation could not be found among several tribally, ANC, CDC or NHO-owned concerns based on common management.

The SBA received several comments on this proposed rule. Most supported the exception to affiliation when the subsidiary is wholly-owned by the tribe, ANC, CDC or NHO, or through another entity, because many tribes and ANCs have formed holding companies. However, some commenters requested a clarification of the meaning of wholly-owned because a literal interpretation would encompass any business that is 100% owned by a tribe, ANC, CDC or NHO. These commenters believe that for purposes of the 8(a) Business Development (BD) Program, "wholly-owned" refers only to holding companies. Thus, they recommended the SBA define the term "holding company" in its size regulations.

The SBA disagrees with these latter comments. For purposes of the 8(a) BD Program, "wholly-owned" does not refer only to holding companies. In addition, the SBA believes that the term "wholly-owned" is clear. It means 100% ownership.

Several commenters supported the proposed exception to affiliation for tribes, ANCs, CDCs and NHOs based on common management. However, each recommended that the SBA also include common contractual relationships between the tribe or ANC and its subsidiaries as an exception to affiliation. These commenters argued that tribes and ANCs provide support services to their subsidiaries and that these services are inherently part of their ownership and management responsibilities. The commenters suggested that the final rule specify that "common administrative services" should be permissible.

The SBA agrees with these comments. The Agency recognizes that it is common practice for tribes, ANCs, CDCs, and NHOs to own other concerns and for the tribal managers to manage these concerns. However, allowing the tribes, ANCs, CDCs, and NHOs to own, manage, and perform the common administrative services for the concern would create an unfair, competitive advantage unless fair and adequate consideration is given. Thus, the SBA amends its regulation to state that no affiliation is found as a result of the performance of common administrative services by a tribe, ANC, CDC, or NHO for one of its subsidiaries, so long as proper consideration is provided for these services.

The SBA stated in the proposed rule that although SBA will not find affiliation between tribes, ANCs, CDCs and NHOs and the business concerns they owned and control because of common management and ownership, "affiliation may be found for other reasons." One commenter believed this statement is too confusing and is unclear as to which "other reasons" the SBA is referring. In response to this comment, the SBA notes that its regulations set forth numerous criteria to determine when the SBA may deem two or more business concerns affiliates. For example, the SBA may find affiliation based upon the totality of circumstances, the newly organized concern rule, or shared common facilities.

Numerous commenters believed that the SBA should make its size rules and 8(a) BD rules on affiliation with respect to Tribes and ANCs the same because the conflict between the two rules provides for inconsistent size determinations, which then have to be explained to contracting officers (COs) and potential teaming partners. Some commenters argued that the legislative history of the 8(a) BD Program supports this position. Others argued that the Alaskan Native Claims Settlement Act (ANCSA) entitles ANCs to all the benefits afforded disadvantaged and minority businesses, and this would apply to size matters, as well. The SBA disagrees with these comments. For either 8(a) BD program entry or 8(a) contract award, there is specific statutory language that generally provides that in determining the size of a concern owned by a tribe or ANC the firm's size will be determined independently without regard to its affiliation with the tribe or ANC, or any other business entity owned by the tribe or ANC. Thus, while there is specific statutory authority for a total exclusion from affiliation between a concern and the tribe or ANC that owns it for purposes of the 8(a) BD program, there is no such similar authority outside the 8(a) BD program. Congress specifically limited the full exclusion only to the 8(a) BD program.

In addition, the differing purposes of the SBA's size regulations and the regulations implementing the 8(a) BD program support distinct affiliation exclusions for 8(a) and non-8(a) contracting opportunities. The purpose of the SBA's size regulations in the context of Federal procurement is to provide a benefit to SBCs that will assist SBCs in receiving a fair proportion of Federal procurements. The purpose of the 8(a) BD Program is to promote business development of SBCs owned and controlled by socially and economically disadvantaged individuals or qualified entities (tribes, ANCs, NHOs and CDCs). The 8(a) BD program is intended to assist such firms toward economic viability so that they can compete with all other businesses, including SBCs that are not owned and controlled by socially and economically disadvantaged individuals and qualified entities. The final rule remains as proposed.

One commenter explained that this part of the proposed rule, if enacted as final, would reverse the result in Size Appeal of *HCI Construction,* Inc., SBA No. SIZ–4460 (2001). In *HCI Construction, Inc.*, SBA No. SIZ–4460, HCI was a tribal holding company that owned several companies. SBA found that HCI's subsidiaries were all affiliated and the exclusion for affiliation for tribally-owned business concerns did not apply because HCI was not a tribe. OHA stated that the appeal allegations raised a policy question calling for a change in the size regulations and were not a justiciable issue.

SBA concurs with the comment that the rule reverses the result in *HCI Construction, Inc.* That is SBA's intent. In the final rule, SBA has divided this section into two parts to make clear that business concerns owned by Indian tribes, ANCs, CDCs, and NHOs (including wholly owned entities of tribes, ANCs, CDCs and NHOs) are not considered to be affiliated with those entities or other concerns owned by those entities for size determination purposes; however, two or more concerns owned by such entities may be affiliated with each other on grounds other than common ownership,

common management, and common administrative services.

The proposed rule added language to § 121.103(b)(6) to clarify that the SBA may find affiliation with respect to approved mentor/protégé relationships for reasons other than the mentor/protégé relationship. One commenter thought the phrase "other reasons" was unclear. In response, the SBA notes that Federal Mentor/Protégé Programs allow mentors to provide specific assistance to the protégé and therefore place limits upon the mentor/protégé relationship. The SBA's size regulations set forth numerous criteria to determine when the SBA will deem two or more business concerns affiliates. These criteria, if outside of the mentor/protégé relationship, are the "other reasons" the SBA may determine that the two concerns engaged in a mentor/protégé relationship are affiliated. The SBA has implemented the final rule as proposed.

Two commenters believed that there should be an exclusion from affiliation for joint ventures with mentors/protégés and another SBC (for size and 8(a)). Specifically, these commenters recommend the SBA's size regulations state that a joint venture between an 8(a) protégé, a mentor and one or more other SBCs is permissible without subjecting the mentor and the other SBCs to an affiliation determination. The SBA does not agree with this suggestion because it would not serve the purpose of Federal mentor/protégé programs and it would create an unfair competitive advantage for such joint ventures.

The SBA received one comment on its proposal to amend § 121.103(c), which provided that where a concern's voting stock is widely held and no single block of stock is large as compared with all other stock holdings, the SBA will deem the concern's Board and Chief Executive Officer (CEO) or President to have the power to control the concern in the absence of evidence to the contrary. In the absence of evidence to the contrary, the SBA will find control in such circumstances to rest with the Board of Directors and with the highest ranking officer of the concern (either its CEO or President) because control of the concern must rest somewhere. One commenter believed that the President/CEO should not be considered as controlling with the Board because the Board selects the President. The SBA notes that even when this is true, the President or CEO still exercises certain elements of control over the concern. Again, someone controls the concern. It is up to the concern itself or the relevant individuals themselves to provide evidence to the contrary that one or more individuals truly do not control the concern. SBA has implemented the final rule as proposed.

Section 121.103(d) discusses affiliation arising under stock options, convertible securities, and agreements to merge. The SBA gives present effect to all such arrangements in determining affiliation and proposed several exceptions to this "present effect" rule, which stem from OHA rulings. One commenter acknowledged support for this proposed rule, while another noted that the last three lines would be clearer if they read "conjectural, or unenforceable under state or Federal law, or where the probability of the transaction (or exercise of the rights) occurring is shown to be extremely remote, are not given present effect." The SBA concurs with this comment and the final regulation provides that options, convertible securities, and agreements that are subject to conditions precedent which are incapable of fulfillment, speculative, conjectural, unenforceable under state or Federal law, or where the probability of the transaction (or exercise of the rights) occurring is shown to be extremely remote, are not given present effect. The rule also makes clear that SBA will not give present effect to options, convertible securities or agreements in order to make a firm eligible as a small business. For example, a concern cannot claim that an individual owning 40% of the concern where that block is large as compared to all others should not be deemed to control the concern because an agreement exists to sell his 40% some unspecified time in the future.

Section 121.103(e) covers control through common management. The SBA proposed clarifying that affiliation arises when an officer, director, managing member, or partner controls two concerns. One commenter stated that the regulation is not clear and questions whether it reads that if an officer owns 51% of two concerns then there is affiliation or if the two concerns have a director in common then they are affiliated. The regulation provides that the SBA will find affiliation based upon common management when a manager controls more than one business concern. Thus, if one person is the President of two concerns, the concerns are affiliated based upon common management. If one person is simply on the Board of two business concerns, but does not control either or both concerns, there would be no finding of affiliation based upon common management. The SBA has implemented the final rule as proposed.

Others commented that the proposed regulation at § 121.103(e), dealing with common management, is in conflict with the 8(a) preclusion from outside employment found in 13 CFR 124.109. The SBA does not believe there is a conflict. The purpose of the size regulations is to determine whether a concern is small and the purpose of the 8(a) BD regulations is to determine eligibility for a business development program. The requirement that the disadvantaged individual upon whom 8(a) eligibility is based must devote full-time to his or her business is a requirement to ensure that the business development purposes of the 8(a) BD program are advanced. That provision has nothing to do with ownership in or membership on boards of directors of more than one concern for size affiliation purposes.

In its proposed regulation, the SBA added § 121.103(g), "Affiliation based on the newly organized concern rule." This proposed section provided that affiliation may arise where former officers, directors, stockholders, managing members (in a limited liability corporation) or key employees of one concern organize a new concern in the same or related industry and serve as its officers, directors, stockholders, managing members or key employees, and the first concern will provide contractual, financial, or other assistance to the new concern. One commenter recommended defining the term "key employee" and suggested reviewing the SBA's former size regulations as reference. This commenter also believed that the proposed rule's preamble discussion of post-1996 OHA decisions should note that the newly organized concern rule was used as a factor in the totality of circumstances. The SBA concurs with these comments and has defined "key employee" to mean an employee who, because of his/her position in the concern, has a critical influence in or substantive control over the operations or management of the concern.

One comment recommended noting in the preamble that with the return of the newly organized concern rule as an independent basis of affiliation, the totality of circumstances ground for affiliation would be rarely used. The SBA disagrees with this comment. The newly organized concern rule is one factor used when determining the totality of circumstances. The totality of circumstances can arise in many instances, aside from newly-organized concerns. The totality of circumstances is used when, absent a single factor sufficient by itself to constitute affiliation, connecting relationships between firms are so suggestive of dependence as to render them affiliated.

For example, the connecting relationships may include financial assistance, the sharing of office space and personnel, and a minority owner having the power to control a challenged firm.

The SBA proposed to redesignate the joint venture regulation currently at § 121.103(f) to § 121.103(h), clarify it, and define its key terms using definitions similar to those set forth in parts 9 and 19 of the Federal Acquisition Regulation (FAR), title 48 of the Code of Federal Regulations. The SBA stated in its preamble to the proposed rule that it was considering adopting a rule that would allow two or more SBCs to form a joint venture relationship that would go beyond a specific contract and still afford them the exclusion from affiliation (if the other requirements are met). In other words, the joint venture could be an ongoing relationship that would allow the concerns to seek out several different larger contract opportunities and still get an exclusion from affiliation without requiring the entities to form a separate joint venture for each contract opportunity. The SBA received several comments on its proposed rule regarding joint ventures.

One commenter expressed support for this clarification and the utilization of FAR definitions to have consistency with the FAR and the SBA's regulations, while others believed that the proposed definition is too narrow. Specifically, the latter commenters stated that joint ventures should not be limited to informal partnership structures but instead should include ongoing relationships, as well as corporations, limited liability corporations and other legally recognized types of entities. These commenters supported the SBA's proposal to permit two or more SBCs to form a joint venture that would last beyond a specific contract and still afford them the exclusion from affiliation because: (1) Many SBCs pursue multiple procurements together; (2) a single ongoing joint venture vehicle should facilitate faster approval by the SBA, if required; and (3) it will increase the ability of SBCs to pursue bundled contracts. However, commenters also believed that if the SBA does allow SBCs to enter into a joint venture for multiple contracts, then the Agency should limit the number of contracts or revenues or define at what point the two companies are affiliated. Otherwise, these joint ventures could create an unfair competitive advantage.

In response to these comments, the SBA first notes that joint ventures are not limited to informal partnership structures. The final rule clarifies that joint ventures may be in the form of a new legal entity (*e.g.*, a limited liability corporation) or may be informal arrangements so long as the agreement between the business concerns explains that it is a joint venture and meets the regulation's definition of joint venture. Second, the SBA believes that it is reasonable to allow SBCs to enter into a joint venture relationship on more than one contract and not be considered "affiliates" generally for purposes of size. However, the SBA also believes that it must limit the application of the exclusion from affiliations for SBCs that have engaged in a joint venture with each other to no more than three offers over a two year time frame. This limitation will allow SBCs to work together for larger procurements on more that one contract while still ensuring that the joint venture relationship remains limited in nature. In addition, the SBA notes that it limits the exclusion from affiliation for those joint ventures that carry out no more than three specific or limited-purpose business ventures. Thus, joint ventures which compete for limited-purpose contracts, such as encryption contracts, would be excluded from affiliation. However, joint ventures which compete for varying types of contracts, such as an encryption contract and then a computer supply contract or an engineering services contract, would not be excluded from an affiliation determination. The SBA has amended its regulation accordingly.

In addition, several commenters argued that there was a conflict between the proposed size rule regarding joint ventures and the 8(a) BD regulations and stated that allowing joint ventures for multiple contracts contradicts the 8(a) BD regulations on the issue. Specifically, 13 CFR 124.513(a) allows a joint venture for the purpose of performing a specific contract. The SBA concurs with this comment and has amended that regulation so that it is consistent with § 121.103(h).

One commenter believed that the SBA should amend the 8(a) BD regulations to conform to the size joint venture regulation such that there should no longer be a requirement for an 8(a) joint venture to have an 8(a) SBC as the managing venture, etc. The SBA notes that the purpose of the 8(a) BD joint venture requirements is to ensure compliance with the Small Business Act. With respect to the statutory requirement that all 8(a) BD contracts be performed by Participant concerns, the SBA interprets the acceptance of Participants into the program to extend to approved joint ventures in which the Participant is the lead joint venture partner. In other words, for purposes of contracting, admission into the program includes both a concern in its own capacity and any approved joint venture in which the concern is the lead entity. For contracting purposes, the SBA will consider the joint venture to be the Participant where the joint venture meets all applicable requirements and is approved by the SBA. Thus, the SBA believes that it is inappropriate and declines to change either the 8(a) BD joint venture regulations or the size regulations to conform to each other.

The proposed regulations also provided for an exception to affiliation for certain joint ventures so long as each concern is small under the size standard corresponding to the NAICS assigned to the contract. However, an existing regulation provides that for joint ventures between a protégé and its approved mentor, the SBA will deem the joint venture small if the protégé qualifies as small for the NAICS code assigned to the procurement. This is not a change in the SBA policy. Nonetheless, one commenter believes this existing regulation conflicts with the SBA's 8(a) BD regulations. The SBA concurs and notes that the proposed size regulation is consistent with the 8(a) BD regulations set forth in § 124.513(b)(3), which addresses the size of concerns to an 8(a) joint venture, including a joint venture between a mentor protégé. However, as noted by the commenter, the proposed size regulation and § 124.513(b)(3) are inconsistent with § 124.520(d)(1), which also addresses the size of mentors and their 8(a) BD protégés that enter into a joint venture for a contract. The SBA has determined that § 124.520(d)(1), which requires that both the mentor and protégé qualify as small for the procurement, contains an inadvertent error and has amended that regulation so that it is now consistent with § 124.513 and the size regulations.

Finally, one commenter stated that if this is issued as final, then former § 121.103(f)(3) becomes § 121.103(h)(3) and references to the former regulation must be changed in § 124.1002(f)(3) and § 125.6(g). The SBA concurs and has made those changes accordingly. In addition, SBA notes that § 125.6(g) states that when an offeror is exempt from affiliation under § 121.103(h)(3) the performance of work requirement set forth in this section applies to the cooperative effort of the team or joint venture. This implies that all the exclusions under § 121.103(f)(3) are included. However, one commenter believed that this would not apply when dealing with the Mentor/Protégé

Program. The SBA disagrees with this comment. Section 124.513(d) specifically provides that for any 8(a) contract, including those between mentors and protégés, the joint venture must perform the applicable percentage of work required by § 124.510, and the 8(a) partner to the joint venture must perform a significant portion of the contract.

The SBA proposed, at § 121.103(h)(4), that it would treat a contractor and its ostensible subcontractor as joint venturers and affiliates for size determination purposes and defined ostensible subcontractor. One commenter suggested separating out the "ostensible subcontractor rule" because the rule requires full affiliation treatment and forbids more favorable joint venture treatment. The same person also believed that the first sentence should omit the reference to "joint venturers." This commenter also recommended refining the last sentence and suggested language. The SBA does not agree with this comment and does not believe it should separate the ostensible contractor rule from the joint venture paragraph. If the SBA considers the prime and its ostensible subcontractor as joint venturers, there may be instances where an exception to affiliation for the joint venture applies. For instance, if an ostensible subcontractor is an SBA-approved mentor to the prime contractor, the two firms would be treated as joint venturers, but the exclusion from affiliation would apply.

The SBA proposed several changes to § 121.104, which pertain to how the annual receipts of a concern are calculated. This modification would identify the items on a Federal tax return that are to be used to calculate receipts. Specifically, the SBA proposed substituting the phrases "gross receipts," "gross sales," and "other income" for "total income" and "gross income." This change in terminology reflects the items on a Federal tax return that comprise all or part of total or gross income. In addition, the SBA proposed a revision to the definition of receipts to include interest, dividends, rents and royalties received by partnerships, S corporations, and sole proprietorships. For corporations, income from these sources is included in total income as reported on IRS Form 1120. However, for partnerships and S corporations, these items are reported separately from total income on Schedule K of IRS Form 1165 and 1120S, respectively, and on Schedule C or S of IRS Form 1040 for sole proprietorships. Business entities such as limited liability corporations can elect the tax entity (partnership, corporation, or disregarded entity) that best suits their need.

One commenter stated that the proposed definition of receipts is confusing because it does not specify with certainty all of the required items and the formulae the size specialist is to apply to them. For example, this commenter questioned whether gross receipts, gross sales, interest, dividends, royalties and other income are all to be combined and what other income is included. This commenter believes the proposed definition invites a challenged firm to present its own receipts theory; in contrast, the current definition operates mechanically from items easily found on tax returns.

At this time, the SBA has decided not to amend that part of § 121.104(a)(1). Although the SBA received only one comment on this definition, the comment suggested that the proposed rule was less clear than the current one. Therefore, the SBA feels it is necessary to further research the definition of "receipts" before implementing an amendment. It remains SBA's intent that amounts received from any source are to be counted in determining a firm's annual receipts. As noted in the proposed rule, this includes amounts received from gross sales, interest, dividends, rents, royalties and other income.

The SBA also proposed to expand its exclusion of receipts received by an agent for another. The proposed regulation set forth those agency-type business entities for which the SBA would exclude amounts collected for another, and permitted the SBA to exclude amounts for similar agent-type situations.

One commenter expressed concern with opening up the list of industries where "agents" may exclude receipts received in trust for another. Currently, the SBA makes changes in the list only after a detailed study of a particular industry and a notice and comment rulemaking. This commenter recommended retaining the current approach because of its certainty, uniformity and ease of application and stated that the proposed rule would invite all kinds of pass-through theories. Another commenter supported the proposed amendments as they relate to insurance agencies and financial businesses and supported not counting pass-through income as part of receipts. One commenter stated that the SBA does not expressly define "received in trust," "claim of right" and "asset base" and each has a different meaning in different industries and contexts. As a result, this commenter believes that the proposed language creates confusion with respect to pass-throughs. In addition, the commenter recommended definitions for these terms.

The SBA has decided not to adopt the proposed language and to retain its current policy of specifically listing those agent-like industries in which certain receipts may be excluded in the calculation of average annual receipts. Although the SBA could develop definitions of certain terms and explain under what conditions it would allow such exclusions, they would remain general guidance in which businesses would not know with certainty how the SBA would ultimately decide. The proposed language could likely, and unnecessarily, invite challenges that raised specious "pass-through" theories that would have to be interpreted through a size protest or size appeal. The current policy of limiting these exclusions to specific industries represents a more workable and clearer policy for the public. Specific industries seeking to exclude "pass-through" amounts will continue to be required to address their concerns to SBA's Office of Size Standards. SBA will then continue to review such submissions and determine whether a further regulatory change regarding "pass-through" amounts is needed.

Finally, the SBA proposed a clarification to the definition of receipts, which stated that the only exclusions from the definition are those specifically provided for in the section and that all other items, such as subcontractor costs, reimbursements for purchases a contractor makes at a customer's request, and employee-based costs such as payroll taxes, may not be excluded from receipts. The SBA received several comments on this proposal.

One commenter believes that there is some confusion with respect to the phrase in current § 121.104 "if also excluded from gross or total income on a consolidated return filed with the IRS." The proposed regulation deleted this parenthetical. Prior to the amendment in 1996, the SBA excluded interaffiliate transactions from an applicant firm's receipts without regard to whether the firm and its affiliates filed a consolidated tax return. The commenter questioned whether there is a return to the SBA's previous policy (pre-1996) of allowing exclusions for interaffiliate transactions even in situations where the business concern has not filed a consolidated return or whether the SBA simply does not feel the parenthetical is necessary because other areas of the current or proposed regulation address the situation. The commenter stated that it supported the position that no consolidated tax return

need be filed for the exclusion to apply because a parent company that subcontracts to a subsidiary does not always file a consolidated tax return. In addition, some affiliates do not qualify for a consolidated return. This commenter believes that the SBA should exclude all interaffiliate transactions.

In response to this comment, the SBA notes that it did intend to delete the parenthetical requiring the filing of a consolidated return in this instance. The SBA understands that not all firms file such consolidated returns, but that these amounts should nonetheless still be excluded. Whether a consolidated return is filed should have no bearing on whether properly documented interaffiliate transactions are excluded from annual receipts. To do otherwise would be to count such amounts twice.

The SBA received one comment supporting its clarification of § 121.104(b)(3), which describes the formula the SBA uses to determine annual receipts when the concern has a "short year" (as defined by the IRS) as one of the years within the period of measurement. The SBA has issued the final rule as proposed.

The SBA also proposed to revise Footnote 14 to the Table of Small Business Size Standards by NAICS Industry in § 121.201. Specifically, the proposed revisions to Footnote 14(b) added language to clarify that a Federal procurement involving a range of environmental services to restore a contaminated environment does not need to include remedial action as one of three activities to be classified under this size standard. One commenter supported the proposed language because they were aware of a situation where a SBC lost a contract as a result of a CO's belief that the larger size standard for Environmental Remediation Services required remedial action. However, the commenter favors even stronger language clarifying the intent of the footnote and recommended revising the footnote to state that "although the general purpose of the procurement need not necessarily include remedial actions, such purpose must be to restore. * * *" The commenter also recommended creating a separate NAICS code for environmental remediation.

The SBA agrees with this comment and has revised the proposed language as recommended to ensure a better understanding of the application of the environmental remediation services size standard. The recommended language by the commenter is consistent with the SBA's purpose of revising the footnote description. The U.S. Bureau of the Census (Census) evaluates requests to establish new industry categories under the NAICS. The SBA is beginning a review of the two size standards it has established under NAICS 562910. As part of that review, it will give consideration to advising Census on the issue, if appropriate.

The SBA also received a comment suggesting the Agency revise the "note" to sector 42 of the NAICS, which would incorrectly restate the nonmanufacturer rule of proposed 121.406. The note states the requirement that the concern have fewer than 500 employees but does not include the two other tests. The commenter therefore recommended that the SBA simply refer readers to § 121.406. The SBA disagrees. The comment under Sector 42 of § 121.201 sets forth the size standard for nonmanufacturers. The term "nonmanufacturer" is defined in § 121.406. There is no need to revise the comment in Sector 42 and refer readers to § 121.406.

The SBA has also added a note to Sector 92. Because of the emphasis on contracting out Government operational services, the SBA has experienced an increase in inquiries regarding the use of Public Administration NAICS codes to classify procurements and firms performing traditionally government-provided activities. The SBA has amended its Table of Size Standards to clarify that small business size standards are not assigned to codes under Public Administration, NAICS Sector 92. This sector consists of establishments in the public sector, *i.e.*, Federal, state, and local government agencies. The SBA establishes small business size standards to assist business concerns in the private sector, NAICS Sectors 11 through 81. The SBA's definition of a business concern, found in § 121.105, emphasizes that a business concern is an "entity organized for profit * * * which makes a significant contribution to the U.S. economy through payment of taxes." By their nature, establishments in the Public Administration Sector are not organized for profit and are the administrators of public funding. Therefore, establishments in this sector do not meet the SBA's definition of a concern.

In addition, the NAICS manual stresses that "the administration of governmental programs is classified in Sector 92, Public Administration, while the operation of that same government program is classified elsewhere in NAICS based on the activities performed." Concerns performing operational services for the administration of a government program are classified under the NAICS code based on the activities performed. Similarly, procurements for these types of services are classified under the NAICS code that best describes the activities to be performed. For example, the administration (oversight, funding, and policy) of Veterans' programs falls under NAICS code 923140, Administration of Veterans' Affairs. The operation and services for a Veterans Hospital are classified using NAICS codes under Subsector 622, Hospitals. The incorporation of this explanation on NAICS Sector 92 into the Table of Size Standards will assist Government officials in assigning the correct NAICS codes for various small business assistance programs.

The SBA proposed an amendment to § 121.401, covering what procurement programs are subject to size determinations, for plain language purposes. One commenter stated that the SBA should clarify that its regulations on size apply to all competitions in which SBCs are competing and not just set-asides. The SBA believes that this regulation is clear that the size rules apply to all procurement programs to which size status as a small business is required or advantageous, and that a further change is not needed. Another commenter stated that the regulations should address representations of small business size status in public announcements, the SBA's Pro-Net (which, effective January 2004, has been merged into the Central Contractor Registration and is referred to as the Dynamic Small Business Search), GSA Advantage, etc. The SBA does not have the jurisdiction to impose its size rules in public announcements. However, if a business concern improperly certifies its size in the Dynamic Small Business Search or GSA's Advantage, then the appropriate Federal agency may deem it a false statement. The SBA notes that the proposed rule would cover such instances. SBA had in fact removed firms from Pro-Net that it found to be other than small after performing a formal size determination.

Another commenter suggested adding a clarifying sentence distinguishing size determinations from protests. In response to this comment, the SBA notes that §§ 134.101 and 134.102 define size determination. In addition, part 134 also distinguishes appeals from size determinations. Therefore, it is unnecessary to repeat this information in part 121.

Section § 121.404 proposed additional exceptions to the general rule that the size status of a concern is determined as of the date the concern submits a

written self-certification that it is small to the procuring agency as part of its initial offer including price. Proposed § 121.404(a)(1) provided that a concern applying to be certified as a Participant in the SBA's 8(a) BD Program, as a small disadvantaged business (SDB), or as a HUBZone SBC must qualify as small as of the date of certification by the SBA. When requiring an 8(a) BD, SDB, or HUBZone applicant to be small for "its primary industry classification," the concern's primary industry classification is determined by looking solely at the applicant concern (*i.e.*, by excluding its affiliates), but the size of the concern is determined by including the receipts or employees of all affiliates. One commenter stated that the "exceptions for size determinations" is confusing. The commenter asked the Agency to clarify that it determines size at the time of program admission for 8(a), SDB and the HUBZone Programs, and at time of contract offer for a contract. While that has always been SBA's position, SBA has clarified this provision.

In proposed § 121.404(a)(3), the SBA addressed size status for purposes of compliance with the nonmanufacturer and ostensible subcontractor rule. Several commenters stated that the use of the phrase "best and final offer" does not take sealed bids into consideration and recommended using the phrase "as of the date of a bid or offer which, if accepted by the Government, would result in a contract." Another commenter stated that "best and final offer" should be "final proposal revision." The SBA concurs and has amended the regulation to state "* * * as of the date of the final proposal revision for negotiated acquisitions and final bid for sealed bidding." The SBA notes that the phrase "final proposal revision" is utilized by the FAR now, rather than "best and final offer."

The SBA received several comments regarding proposed § 121.404(g), which specified that a concern that qualified as a small business at the time it receives a contract is considered to be a small business throughout the life of that contract. The SBA noted in the preamble that it was considering a rule that would permit a procuring agency to treat a concern as a SBC for no more than 5 years from the date of award.

Four commenters opposed any rule that would require an agency to consider a business small only for a period of 5 years. These commenters stated that agencies are contracting for longer periods and simply because a contract is lengthy does not mean the concern will grow large over the length of the contract. The length of the contract should not be a factor when the original competition was among SBCs.

Meanwhile, several commenters expressed a different view and stated that they do not support allowing a concern to be considered small "throughout the life of the contract." These commenters support GSA's FAR deviation (GSA Acquisition Letter MV–03–01, dated February 21, 2003, and Supplemental Number 1, dated February 11, 2004) that requires businesses to re-certify their size status each time an option for performance in a new contract period is exercised. For example, if the concern is found to be other than small, the agency should be forced to count those contract dollars as an award to an other than small business. This may force agencies to re-solicit for a small business set aside rather than exercise the contract option.

SBA notes that the GSA FAR deviation applies only to awards under the Multiple Awards Schedule (MAS) Program. It has been the SBA's longstanding policy to allow a concern that qualified as a small business at the time it received a contract to be considered a small business throughout the life of that contract. At this time, the SBA is not addressing awards under the MAS program and is not changing its policy regarding other than multiple award contracts. As such, the SBA is implementing the rule as proposed. However, the SBA will continue to consider this issue, including all of the comments received and issues raised.

The SBA also received comments requesting that the Agency address how to treat the acquisition of a SBC by another concern during contract performance, especially since the awardee may then no longer be small. This includes instances where a contract is novated. The commenter believed that the SBA's regulations should require re-certification at the time the contract is novated pursuant to FAR 42.12 and that the SBA should consider re-certifications for other acquisitions, such as the acquisition of stock. The SBA concurs with this comment and has amended the size regulations to address novation of contracts at § 121.404(i), including novations that occur for multiple award schedule contracts. The amended regulations now state that the new entity must submit a written self-certification that it is small to the procuring agency so that the agency can count the award options, or orders issued pursuant to that contract, towards its small business goals.

The SBA proposed amendments to § 121.406, which, in general, address how a SBC qualifies to provide manufactured products under a small business set-aside or an 8(a) contract. One commenter recommended that the SBA add a paragraph clarifying that this rule and § 125.6 (limitations on subcontracting) do not apply to § 8(d) subcontracting. The SBA concurs and has added a sentence clarifying this issue.

Other commenters stated that they oppose the two-tiered size standard for nonmanufacturers—one for most procurements and another for procurements at or under the simplified acquisition threshold. These commenters believe that the two-tiered approach can result in confusion and suggest changing the regulation to provide that the rule does not have to be met if no bidder or offeror proposes to supply the end item of a small business manufacturer or processor. The commenters believe that this change would provide a preference for small business suppliers when no item manufactured by a small business is proposed. The SBA does not agree with this comment and notes that the nonmanufacturer rule is statutory and applies to all procurements above the simplified acquisition threshold unless the SBA grants a waiver. The SBA has promulgated the regulation as proposed.

In § 121.406(b)(1)(ii), the SBA proposed deleting the requirement that a nonmanufacturer must normally sell the items being supplied to the public. This rule was based on provisions of the Walsh-Healey Public Contracts Act, which permitted Federal acquisitions of supplies only from manufacturers or "regular dealers." One of the requirements for being a regular dealer was to sell items to the general public. These provisions of the Walsh-Healey Act were repealed by the Federal Acquisition and Streamlining Act of 1994. The SBA believes that requiring a firm to sell to the general public is overly restrictive. Several commenters supported this amendment. However, some believed the rule should be limited to the defined sector of the small business community engaged in reselling. The SBA does not agree with this last comment because if the SBA limits application of the rule to only "resellers," it will not be helping SBCs.

With proposed § 121.406(b)(2), the SBA explained how a reseller can qualify as an eligible small business manufacturer. According to the proposed regulation, if a firm adds something to an item that the manufacturer of that existing item does not provide, the SBA will consider the firm to be the manufacturer of the ultimate end item (*i.e.*, the item plus the

addition). The SBA received several comments on this proposed rule.

Several commenters stated that the explanation to this proposed regulation is confusing and inconsistent. The regulation states that the test is whether the modifications can be performed by and are available from the manufacturer of the existing end item. One commenter believed the examples provided in the preamble to the proposed rule were inconsistent with this definition. In one example, a SBC is considered the manufacturer because the safety switch it adds to a saw is a feature that the saw's manufacturer does not make or provide. In a second example, a concern is not a manufacturer because the video card it adds is one that the computer manufacturer could have installed. The commenter believed that whether the item is added or could be added are two different tests and the proposed rule is unclear as to whether both tests must be met. Similarly, another commenter believes that the original manufacturer could install any number of add-in peripherals but elects not to thereby allowing the SBC the option of adding it on. Thus, it should not be a factor in determining whether a concern is or is not considered a manufacturer. Rather, this commenter believed that the SBA should consider the following factors when determining whether the SBC is a reseller: (1) Whether the facility has true engineering capabilities; (2) whether the facility has the equipment to fabricate metal or plastic; (3) whether there is an assembly line operation; (4) whether there is a custom packaging and boxing operation; (5) whether the new name of the end product reflects the manufacturing changes; and (6) whether the company uses custom cases or bezels distinguishing it from the original. For example, this commenter believes that the SBA should consider a SBC that goes through the trouble of customizing logos, computer chassis, *etc.* and delivering a product under its own name a computer manufacturer.

One commenter believed that firms that provide computer and other information technology equipment should have a specific rule detailing when such a firm will be treated as the manufacturer of the end item being supplied. The commenter suggested looking at the percentage (by value) of components installed.

Finally, another commenter opposed the amendment because it could corrupt the current process. The simple process of setting up a bagging operation does not constitute manufacturing and unscrupulous operators could take advantage of this change.

SBA believes that its regulations are clear—a business concern will not be deemed the end item manufacturer if the modification can be performed by and is available from the manufacturer of an existing end item. In addition, SBA agrees with the comment that when determining who is a manufacturer, factors that characterize the operations of a manufacturer, as opposed to a reseller, should be considered. SBA is adding as part of its assessment of a manufacturer a concern's technical capabilities; plant, facilities and equipment; production or assembly line processes; packaging and boxing operations; labeling of products; and product warranties. Consideration of these factors is consistent with the current regulations, which require a concern, through its own facilities, to perform activities to produce an end item to be deemed a manufacturer. The additional language enables SBA to better distinguish activities that constitute manufacturing from activities that are incidental or of minor value.

SBA also agrees that the computer industry deserves special attention, as there has been confusion as to how much installation must be done before a firm will be considered a manufacturer of computers. The final rule provides that a firm must generally install components totaling at least 50% of the value of the end item in order to be considered the manufacturer. However, where a firm installs one or more components to an existing end item where those identical modifications cannot be performed by and are not available from the manufacturer of the existing end item, the general language of § 121.406(b)(2) may permit the firm to be considered the manufacturer in appropriate circumstances.

However, SBA notes that it is not making any changes in response to the comment regarding bagging operations. The issue raised by this comment pertains primarily to small business participation on commodity purchases. SBA plans to address that broader issue as part of a separate rulemaking action to be published in the near future.

With § 121.410, the SBA proposed an amendment to determining size for purposes of subcontracts. Specifically, the proposed rule eliminated the 500-employee size standard provision for subcontracts of less than $10,000 and required that the size standard of the NAICS industry that best matches the purpose of the subcontract be used. This change merely adopted the size standard policy now in effect for subcontracts of $10,000 or greater. The SBA received two comments on this proposal. Both supported the elimination of the 500-employee size standard for subcontracts, but recommended clarification that prime contractors can select the NAICS code for the subcontracts because many primes believe the NAICS code for the subcontract is the same as for the prime contract. The SBA concurs with this comment and has clarified the rule accordingly.

Proposed § 121.411(a) changed the reference to representations made in SBA's Procurement Automated Source System (PASS) to SBA's Procurement Marketing & Access Network (PRO-Net). This final rule makes a further change. PRO-Net has now become part of the Central Contractor Registration (CCR). Specifically, CCR's Dynamic Small Business Search provides the same representations as were contained in PRO-Net. As such, the final rule changes the reference from PASS to CCR.

With § 121.702(a), the SBA proposed recognizing that for purposes of the SBIR Program, the SBA permits a joint venture when each entity to the venture is at least 51 percent owned and controlled by one or more individuals who are citizens of, or permanent resident aliens in, the United States. The SBA received one comment on this rule, which noted a grammatical error. At this time, however, the SBA has decided not to implement the rule as proposed. The SBA published a proposed rule in the **Federal Register** on June 4, 2003, 68 FR 33412, which sought to amend the eligibility requirements of the SBIR Program. The SBA believes that any amendments to the eligibility requirements of the program should therefore be addressed as part of the finalization of that rule.

The SBA received one comment on when size determinations are made for purposes of the SBIR Program. The commenter stated that based upon a ruling by OHA, *Bend Research, Inc.*, SBA No. 4369 (July 29, 1999), size protests must be determined on the date of award of the Phase I or II SBIR funding agreement. However, many agencies are reluctant to issue a funding agreement to a concern if the concern may not be eligible for the program. The commenter believed that SBA should amend its regulation to state that SBA will allow size protests for Phase I or II SBIR awards in anticipation of the award. In other words, once the procuring agency has selected a business concern for an SBIR award, but prior to the actual issuance of the award, SBA will review the size of the concern in response to a protest to determine if it is actually eligible for that award.

SBA concurs with this comment and has amended the regulation accordingly. The final regulation provides that the size status of a concern for the purpose of a funding agreement under the SBIR program is determined as of the date of the award for both Phase I and Phase II SBIR awards *or* on the date of the request for a size determination, if an award is pending.

The SBA proposed amending § 121.1001 entitled "Who may initiate a size protest or request a formal size determination?" The SBA received one comment supporting this proposal. The SBA has promulgated the final rule as proposed.

The SBA received several comments to § 121.1001(a)(7), which provided that "For any unrestricted Government procurement in which status as a small business may be beneficial, including, but not limited to, the award of a contract to a small business where there are tie bids, the opportunity to seek a Certificate of Competency by a small business, and SDB or HUBZone price evaluation preferences, the following entities may protest in connection with a particular procurement: * * *" According to the commenters, SBCs should be permitted to protest certifications by competitors in all contracts and not just those where a specific benefit is in question. Thus, for an unrestricted government procurement in which status as a SBC has been declared or represented by an awardee, any offeror can protest. These commenters point out that it is important to ensure that statistics reported on small business awards are accurate to determine if agencies are meeting their small business goals.

SBA concurs with this comment, and believes that size protests should be allowed on unrestricted procurements. Small business concerns competing on unrestricted procurements have certain benefits not available to other businesses, such as faster progress payments, an exemption from submitting a small business subcontracting plan on certain contracts, and an exemption from cost accounting standards. If a business concern represents itself as small, the SBA believes it should have the opportunity to accept a challenge to ensure that these benefits are limited to eligible small businesses. Allowing size protests on unrestricted solicitations will provide an incentive for businesses and contracting officers to more carefully review small business representations. SBA is also concerned with the quality and integrity of the data it relies upon in establishing and monitoring small business goals. This new policy partly addresses that issue. Section 121.1001(a)(7) is therefore revised to permit size protests challenging a firm's representation that it is a small business on any unrestricted contract.

One commenter noted that the SBA should add the AA for HUBZones to proposed § 121.1001(a)(7)(iii). The SBA is not adopting that proposal as part of this final rule because that change is being made as part of another rulemaking. SBA notes that it proposed such an amendment pursuant to a rule issued on January 28, 2002, 67 FR 3826, amending the HUBZone Program.

The SBA proposed a new § 121.1004(a)(4) to address instances where notification of contract award is posted on the Internet, as authorized under Simplified Acquisition Procedures (SAP). In such cases, the SBA proposed that a size protest must be made to the CO within five business days after the electronic posting. One commenter stated that the 5-day protest period should begin "upon oral or electronic notification by the contracting officer or the date that the protester learns the identity of the apparent successful offeror via another means." This commenter believes that protesters sometimes learn about awards via an awardee's public announcement or through oral communications.

The SBA concurs and has added a new paragraph at § 121.1004(a)(5) that would provide that where no written notification is required, either prior to or at the time of award, a protest will be considered timely if filed within five days after receipt of verbal notification from the CO or other agency representative. For example, under SAP, there is no requirement for the CO to provide either pre-award or award notification to unsuccessful offerors. Consequently, the date of verbal notification or date of posting on the internet will be considered the start of the 5-day period allotted for a timely size protest.

The SBA proposes to amend § 121.1007 containing the requirement that a size protest must allege specific facts by restoring the six examples that were formerly found at § 121.1604(a) (1995). The SBA received one comment about these examples. One commenter noted that some of the examples used the term "unspecific" while the regulation itself uses the term "non-specific" and recommends changing the examples accordingly. The SBA concurs with this comment and has made the necessary changes.

The proposed rule amended § 121.1008(d) by adding a sentence requiring a concern whose size status is at issue to furnish information about its alleged affiliates to the SBA, notwithstanding any third party claims of privacy or confidentiality, because the SBA does not disclose information obtained in the course of a size determination except as permitted by Federal law. One commenter opposed any rule that would require a concern to provide information concerning an alleged third party affiliate because there is no means to force an alleged affiliated third party to produce the information. In addition, although the SBA does not "disclose" the information, it allegedly "misplaces" the information. The SBA notes that this rule codifies several OHA rulings and therefore remains as proposed. *See, e.g., Size Appeal of Donovan Travel, Inc., d/b/a Carlson Wagonlit Travel,* SBA No. SIZ–4270 (1997); *Size Appeal of Quantrad Sensor, Inc.*, SBA No. SIZ–4255 (1997).

With § 121.1103(b)(3), the SBA proposed a regulation explaining service of a NAICS appeal to the SBA. One commenter noted that the new requirement to serve NAICS code appeals to the Associate General Counsel for Procurement Law and the CO is inconsistent with existing § 134.305(c) which requires service to the CO only. The commenter recommends a conforming change to § 134.305(c). The SBA concurs and has made a corresponding change to § 134.305(c).

Part 134 contains rules of procedure governing cases before OHA, including size appeals and former SIC (now NAICS) code appeals. The SBA proposed several amendments to part 134, mainly to conform to the changes proposed for part 121. The proposed rule amended § 134.102(k) to authorize an affected party to appeal a determination by the SBA Government Contracting Area Office as to whether two or more concerns are affiliated for purposes of the SBA's financial assistance programs, or other programs for which an affiliation determination was requested. One commenter noted that the definition of size determination is inconsistent with the definition in § 134.101 and recommended conforming the revision to § 134.101. The SBA concurs and has made a corresponding change to § 134.101.

Application of the Final Rule

As indicated above, this final rule is effective 30 days after the date of publication in the **Federal Register**. The amendments apply to all solicitations issued on or after the effective date, as well as all applications for financial or other assistance pending as of or

submitted to the SBA on or after the effective date.

Compliance With Executive Orders 12866, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–602)

OMB has determined that this final rule does not constitute a "significant regulatory action" under Executive Order 12866. This rule clarifies the SBA's procedural and definitional size rules. As such, the rule has no effect on the amount or dollar value of any Federal contract requirements or of any financial assistance provided through the SBA. Therefore, the rule is not likely to have an annual economic effect of $100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the United States economy. In addition, the final rule does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency, materially alter the budgetary impact of entitlements, grants, user fees, loan programs or the rights and obligations of such recipients, nor raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, the SBA determines that this rule does not impose new reporting or record keeping requirements.

This action meets applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

This regulation will not have 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, for the purposes of Executive Order 13132, SBA determines that this final rule has no federalism implications warranting preparation of a federalism assessment.

The SBA has determined that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Although the rule amends several definitions concerning the size of a business concern, the majority of these amendments are clarification of current policy.

List of Subjects

13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Loan programs—business, Small businesses.

13 CFR Part 124

Administrative practice and procedure, Government procurement, Small businesses, Minority businesses, Technical assistance.

13 CFR Part 125

Government contracts, Government procurement, Reporting and recordkeeping requirements, Small businesses, Technical assistance

13 CFR Part 134

Administrative practice and procedure, Organization and functions (Government agencies).

■ For the reasons set forth in the preamble, amend parts 121, 124, 125, and 134 of title 13, Code of Federal Regulations, as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

■ 1. The authority citation for 13 CFR part 121 continues to read as follows:

Authority: 15 U.S.C. 632(a), 634(b)(6), 637(a), 644(c) and 662(5) and sec. 304, Pub. L. 103–403, 108 Stat. 4175, 4188, Pub. L. 106–24, 113 Stat. 39.

■ 2. Amend § 121.103 by revising the section heading; revising paragraphs (a)(1), (3) and (4) and adding new paragraphs (a)(5) and (6); revising the title of paragraph (b); revising paragraph (b)(2); adding a new sentence to the end of paragraph (b)(6); revising paragraphs (c), (d), (e) and (f); redesignating revised paragraph (f) as paragraph (h); redesignating paragraph (g) as paragraph (i); and adding new paragraphs (f) and (g) to read as follows:

§ 121.103 How does SBA determine affiliation?

(a) *General Principles of Affiliation.* (1) Concerns and entities are affiliates of each other when one controls or has the power to control the other, or a third party or parties controls or has the power to control both. It does not matter whether control is exercised, so long as the power to control exists.

(2) * * *

(3) Control may be affirmative or negative. Negative control includes, but is not limited to, instances where a minority shareholder has the ability, under the concern's charter, by-laws, or shareholder's agreement, to prevent a quorum or otherwise block action by the board of directors or shareholders.

(4) Affiliation may be found where an individual, concern, or entity exercises control indirectly through a third party.

(5) In determining whether affiliation exists, SBA will consider the totality of the circumstances, and may find affiliation even though no single factor is sufficient to constitute affiliation.

(6) In determining the concern's size, SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates, regardless of whether the affiliates are organized for profit.

(b) *Exceptions to affiliation coverage.* (1) * * *

(2)(i) Business concerns owned and controlled by Indian Tribes, Alaska Native Corporations (ANCs) organized pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), Native Hawaiian Organizations (NHOs), Community Development Corporations (CDCs) authorized by 42 U.S.C. 9805, or wholly-owned entities of Indian Tribes, ANCs, NHOs, or CDCs are not considered affiliates of such entities.

(ii) Business concerns owned and controlled by Indian Tribes, ANCs, NHOs, CDCs, or wholly-owned entities of Indian Tribes, ANCs, NHOs, or CDCs are not considered to be affiliated with other concerns owned by these entities because of their common ownership or common management. In addition, affiliation will not be found based upon the performance of common administrative services, such as bookkeeping and payroll, so long as adequate payment is provided for those services. Affiliation may be found for other reasons.

* * * * *

(6) * * * Affiliation may be found for other reasons.

(c) *Affiliation based on stock ownership.* (1) A person (including any individual, concern or other entity) that owns, or has the power to control, 50 percent or more of a concern's voting stock, or a block of voting stock which is large compared to other outstanding blocks of voting stock, controls or has the power to control the concern.

(2) If two or more persons (including any individual, concern or other entity) each owns, controls, or has the power to control less than 50 percent of a concern's voting stock, and such minority holdings are equal or approximately equal in size, and the aggregate of these minority holdings is large as compared with any other stock holding, SBA presumes that each such person controls or has the power to

control the concern whose size is at issue. This presumption may be rebutted by a showing that such control or power to control does not in fact exist.

(3) If a concern's voting stock is widely held and no single block of stock is large as compared with all other stock holdings, the concern's Board of Directors and CEO or President will be deemed to have the power to control the concern in the absence of evidence to the contrary.

(d) *Affiliation arising under stock options, convertible securities, and agreements to merge.* (1) In determining size, SBA considers stock options, convertible securities, and agreements to merge (including agreements in principle) to have a present effect on the power to control a concern. SBA treats such options, convertible securities, and agreements as though the rights granted have been exercised.

(2) Agreements to open or continue negotiations towards the possibility of a merger or a sale of stock at some later date are not considered "agreements in principle" and are thus not given present effect.

(3) Options, convertible securities, and agreements that are subject to conditions precedent which are incapable of fulfillment, speculative, conjectural, or unenforceable under state or Federal law, or where the probability of the transaction (or exercise of the rights) occurring is shown to be extremely remote, are not given present effect.

(4) An individual, concern or other entity that controls one or more other concerns cannot use options, convertible securities, or agreements to appear to terminate such control before actually doing so. SBA will not give present effect to individuals', concerns' or other entities' ability to divest all or part of their ownership interest in order to avoid a finding of affiliation.

(e) *Affiliation based on common management.* Affiliation arises where one or more officers, directors, managing members, or partners who control the board of directors and/or management of one concern also control the board of directors or management of one or more other concerns.

(f) *Affiliation based on identity of interest.* Affiliation may arise among two or more persons with an identity of interest. Individuals or firms that have identical or substantially identical business or economic interests (such as family members, individuals or firms with common investments, or firms that are economically dependent through contractual or other relationships) may be treated as one party with such interests aggregated. Where SBA determines that such interests should be aggregated, an individual or firm may rebut that determination with evidence showing that the interests deemed to be one are in fact separate.

(g) *Affiliation based on the newly organized concern rule.* Affiliation may arise where former officers, directors, principal stockholders, managing members, or key employees of one concern organize a new concern in the same or related industry or field of operation, and serve as the new concern's officers, directors, principal stockholders, managing members, or key employees, and the one concern is furnishing or will furnish the new concern with contracts, financial or technical assistance, indemnification on bid or performance bonds, and/or other facilities, whether for a fee or otherwise. A concern may rebut such an affiliation determination by demonstrating a clear line of fracture between the two concerns. A "key employee" is an employee who, because of his/her position in the concern, has a critical influence in or substantive control over the operations or management of the concern.

(h) *Affiliation based on joint ventures.* A joint venture is an association of individuals and/or concerns with interests in any degree or proportion by way of contract, express or implied, consorting to engage in and carry out no more than three specific or limited-purpose business ventures for joint profit over a two year period, for which purpose they combine their efforts; property, money, skill, or knowledge, but not on a continuing or permanent basis for conducting business generally. This means that the joint venture entity cannot submit more than three offers over a two year period, starting from the date of the submission of the first offer. A joint venture may or may not be in the form of a separate legal entity. The joint venture is viewed as a business entity in determining power to control its management. SBA may also determine that the relationship between a prime contractor and its subcontractor is a joint venture, and that affiliation between the two exists, pursuant to paragraph (h)(4) of this section.

(1) Parties to a joint venture are affiliates if any one of them seeks SBA financial assistance for use in connection with the joint venture.

(2) Except as provided in paragraph (h)(3) of this section, concerns submitting offers on a particular procurement or property sale as joint venturers are affiliated with each other with regard to the performance of that contract.

(3) *Exception to affiliation for certain joint ventures.* (i) A joint venture of two or more business concerns may submit an offer as a small business for a Federal procurement without regard to affiliation under paragraph (h) of this section so long as each concern is small under the size standard corresponding to the NAICS code assigned to the contract, provided:

(A) The procurement qualifies as a "bundled" requirement, at any dollar value, within the meaning of § 125.2(d)(1)(i) of this chapter; or

(B) The procurement is other than a "bundled" requirement within the meaning of § 125.2(d)(1)(i) of this chapter, and:

(1) For a procurement having a receipts based size standard, the dollar value of the procurement, including options, exceeds half the size standard corresponding to the NAICS code assigned to the contract; or

(2) For a procurement having an employee-based size standard, the dollar value of the procurement, including options, exceeds $10 million.

(ii) A joint venture of at least one 8(a) Participant and one or more other business concerns may submit an offer for a competitive 8(a) procurement without regard to affiliation under paragraph (h) of this section so long as the requirements of § 124.513(b)(1) of this chapter are met.

(iii) Two firms approved by SBA to be a mentor and protégé under 13 CFR 124.520 may joint venture as a small business for any Federal Government procurement, provided the protégé qualifies as small for the size standard corresponding to the NAICS code assigned to the procurement and, for purposes of 8(a) sole source requirements, has not reached the dollar limit set forth in 13 CFR 124.519.

(4) A contractor and its ostensible subcontractor are treated as joint venturers, and therefore affiliates, for size determination purposes. An ostensible subcontractor is a subcontractor that performs primary and vital requirements of a contract, or of an order under a multiple award schedule contract, or a subcontractor upon which the prime contractor is unusually reliant. All aspects of the relationship between the prime and subcontractor are considered, including, but not limited to, the terms of the proposal (such as contract management, technical responsibilities, and the percentage of subcontracted work), agreements between the prime and subcontractor (such as bonding assistance or the teaming agreement), and whether the subcontractor is the incumbent contractor and is ineligible to submit a

proposal because it exceeds the applicable size standard for that solicitation.

(5) For size purposes, a concern must include in its receipts its proportionate share of joint venture receipts, and in its total number of employees its proportionate share of joint venture employees.

■ 3. In § 121.104 redesignate (a)(3) as paragraph (e); revise paragraph (a); remove paragraph (c); redesignate paragraph (b) as (c); revise newly designated paragraph (c); add new paragraph (b); revise paragraph (d) to read as follows:

§ 121.104 How does SBA calculate annual receipts?

(a) *Receipts* means "total income" (or in the case of a sole proprietorship, "gross income") plus "cost of goods sold" as these terms are defined and reported on Internal Revenue Service (IRS) tax return forms (such as Form 1120 for corporations; Form 1120S and Schedule K for S corporations; Form 1120, Form 1065 or Form 1040 for LLCs; Form 1065 and Schedule K for partnerships; Form 1040, Schedule F for farms; Form 1040, Schedule C for other sole proprietorships). Receipts do not include net capital gains or losses; taxes collected for and remitted to a taxing authority if included in gross or total income, such as sales or other taxes collected from customers and excluding taxes levied on the concern or its employees; proceeds from transactions between a concern and its domestic or foreign affiliates; and amounts collected for another by a travel agent, real estate agent, advertising agent, conference management service provider, freight forwarder or customs broker. For size determination purposes, the only exclusions from receipts are those specifically provided for in this paragraph. All other items, such as subcontractor costs, reimbursements for purchases a contractor makes at a customer's request, and employee-based costs such as payroll taxes, may not be excluded from receipts.

(1) The Federal income tax return and any amendments filed with the IRS on or before the date of self-certification must be used to determine the size status of a concern. SBA will not use tax returns or amendments filed with the IRS after the initiation of a size determination.

(2) When a concern has not filed a Federal income tax return with the IRS for a fiscal year which must be included in the period of measurement, SBA will calculate the concern's annual receipts for that year using any other available information, such as the concern's regular books of account, audited financial statements, or information contained in an affidavit by a person with personal knowledge of the facts.

(b) *Completed fiscal year* means a taxable year including any short year. "Taxable year" and "short year" have the meanings attributed to them by the IRS.

(c) *Period of measurement.* (1) Annual receipts of a concern that has been in business for three or more completed fiscal years means the total receipts of the concern over its most recently completed three fiscal years divided by three.

(2) Annual receipts of a concern which has been in business for less than three complete fiscal years means the total receipts for the period the concern has been in business divided by the number of weeks in business, multiplied by 52.

(3) Where a concern has been in business three or more complete fiscal years but has a short year as one of the years within its period of measurement, annual receipts means the total receipts for the short year and the two full fiscal years divided by the total number of weeks in the short year and the two full fiscal years, multiplied by 52.

(d) *Annual receipts of affiliates.*

(1) The average annual receipts size of a business concern with affiliates is calculated by adding the average annual receipts of the business concern with the average annual receipts of each affiliate.

(2) If a concern has acquired an affiliate or been acquired as an affiliate during the applicable period of measurement or before the date on which it self-certified as small, the annual receipts used in determining size status includes the receipts of the acquired or acquiring concern. Furthermore, this aggregation applies for the entire period of measurement, not just the period after the affiliation arose.

(3) If the business concern or an affiliate has been in business for a period of less than three years, the receipts for the fiscal year with less than a 12 month period are annualized in accordance with paragraph (c)(2) of this section. Receipts are determined for the concern and its affiliates in accordance with paragraph (c) of this section even though this may result in using a different period of measurement to calculate an affiliate's annual receipts.

(4) The annual receipts of a former affiliate are not included if affiliation ceased before the date used for determining size. This exclusion of annual receipts of a former affiliate applies during the entire period of measurement, rather than only for the period after which affiliation ceased.

(e) Unless otherwise defined in this section, all terms shall have the meaning attributed to them by the IRS.

■ 4. Revise § 121.106(a) and (b)(4) to read as follows:

§ 121.106 How does SBA calculate number of employees?

(a) In determining a concern's number of employees, SBA counts all individuals employed on a full-time, part-time, or other basis. This includes employees obtained from a temporary employee agency, professional employee organization or leasing concern. SBA will consider the totality of the circumstances, including criteria used by the IRS for Federal income tax purposes, in determining whether individuals are employees of a concern. Volunteers (*i.e.*, individuals who receive no compensation, including no in-kind compensation, for work performed) are not considered employees.

(b) * * *

(4)(i) The average number of employees of a business concern with affiliates is calculated by adding the average number of employees of the business concern with the average number of employees of each affiliate. If a concern has acquired an affiliate or been acquired as an affiliate during the applicable period of measurement or before the date on which it self-certified as small, the employees counted in determining size status include the employees of the acquired or acquiring concern. Furthermore, this aggregation applies for the entire period of measurement, not just the period after the affiliation arose.

(ii) The employees of a former affiliate are not counted if affiliation ceased before the date used for determining size. This exclusion of employees of a former affiliate applies during the entire period of measurement, rather than only for the period after which affiliation ceased.

■ 5. Amend § 121.201 as follows:

■ a. In the table "Small Business Size Standards by NAICS Industry," add the heading NAICS Subsector 92, "Public Administration" at the end of the table and footnote 19; and

■ b. Amend footnote 14, by revising paragraph (b) to read as follows:

§ 121.201 What size standards has SBA identified by North American Industry Classification System codes?

* * * * *

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY

NAICS codes	NAICS U.S. industry title	Size standards in million of dollars	Size standards in number of employees
*	* * * * * * *		
	Sector 92—Public Administration [19]		
	(Small business size standards are not established for this sector. Establishments in the Public Administration sector are Federal, state, and local government agencies which administer and oversee government programs and activities that are not performed by private establishments.)		
*	* * * * * * *		

Footnotes

* * * * *

14. *NAICS 562910—Environmental Remediation Services:*

(a) * * *

(b) For purposes of classifying a Government procurement as Environmental Remediation Services, the general purpose of the procurement must be to restore or directly support the restoration of a contaminated environment (such as, preliminary assessment, site inspection, testing, remedial investigation, feasibility studies, remedial design, remediation services, containment, removal of contaminated materials, storage of contaminated materials or security and site closeouts), although the general purpose of the procurement need not necessarily include remedial actions. Also, the procurement must be composed of activities in three or more separate industries with separate NAICS codes or, in some instances (*e.g.*, engineering), smaller sub-components of NAICS codes with separate, distinct size standards. These activities may include, but are not limited to, separate activities in industries such as: Heavy Construction; Specialty Trade Contractors; Engineering Services; Architectural Services; Management Consulting Services; Hazardous and Other Waste Collection; Remediation Services, Testing Laboratories; and Research and Development in the Physical, Engineering and Life Sciences. If any activity in the procurement can be identified with a separate NAICS code, or component of a code with a separate distinct size standard, and that industry accounts for 50 percent or more of the value of the entire procurement, then the proper size standard is the one for that particular industry, and not the Environmental Remediation Service size standard.

* * * * *

19. *NAICS Sector 92*—Small business size standards are not established for this sector. Establishments in the Public Administration sector are Federal, State, and local government agencies which administer and oversee government programs and activities that are not performed by private establishments. Concerns performing operational services for the administration of a government program are classified under the NAICS private sector industry based on the activities performed. Similarly, procurements for these types of services are classified under the NAICS private sector industry that best describes the activities to be performed. For example, if a government agency issues a procurement for law enforcement services, the requirement would be classified using one of the NAICS industry codes under 56161, Investigation, Guard, and Armored Car Services.

■ 6. In § 121.301, revise paragraphs (a), (d)(1) and (e) to read as follows:

§ 121.301 What size standards are applicable to financial assistance programs?

(a) For Business Loans and Disaster Loans (other than physical disaster loans), an applicant business concern, including its affiliates, must not exceed the size standard for the industry in which the applicant is primarily engaged.

* * * * *

(d) * * *

(1) Any construction (general or special trade) concern or concern performing a contract for services is small if, together with its affiliates, its average annual receipts does not exceed $6.0 million.

* * * * *

(e) The applicable size standards for purposes of SBA's financial assistance programs, excluding the Surety Bond Guarantee assistance program, are increased by 25% whenever the applicant agrees to use all of the financial assistance within a labor surplus area. Labor surplus areas are listed monthly in the Department of Labor publication "Area Trends in Employment and Unemployment."

■ 7. Amend § 121.302 by revising paragraph (a), re-designating paragraph (d) as paragraph (e), revising newly designated paragraph (e), and adding the following new paragraph (d) to read as follows:

§ 121.302 When does SBA determine the size status of an applicant?

(a) The size status of an applicant for SBA financial assistance is determined as of the date the application for financial assistance is accepted for processing by SBA, except for applications under the Preferred Lenders Program (PLP), the Disaster Loan program, the SBIC program, and the New Markets Venture Capital (NMCV) program.

* * * * *

(d) For financial assistance from an SBIC licensee or an NMVC company, size is determined as of the date a concern's application is accepted for processing by the SBIC or the NMVC company.

(e) Changes in size after the applicable date when size is determined will not disqualify an applicant for assistance.

■ 8. Revise § 121.305 heading to read as follows:

§ 121.305 What size eligibility requirements exist for obtaining financial assistance relating to particular procurements?

* * * * *

■ 9. Revise § 121.401 to read as follows:

§ 121.401 What procurement programs are subject to size determinations?

The rules set forth in §§ 121.401 through 121.413 apply to all Federal procurement programs for which status as a small business is required or advantageous, including the small business set-aside program, SBA's Certificate of Competency program, the Very Small Business program, SBA's 8(a) Business Development program, SBA's HUBZone program, the Small

Business Subcontracting program, and the Federal Small Disadvantaged Business (SDB) program.

■ 10. Amend § 121.402 by revising the section heading and paragraph (a), and by adding a new sentence to the end of paragraph (b) to read as follows:

§ 121.402 What size standards are applicable to Federal Government Contracting programs?

(a) A concern must not exceed the size standard for the NAICS code specified in the solicitation. The contracting officer must specify the size standard in effect on the date the solicitation is issued. If SBA amends the size standard and it becomes effective before the date initial offers (including price) are due, the contracting officer may amend the solicitation and use the new size standard.

(b) * * * Procurements for supplies must be classified under the appropriate manufacturing NAICS code, not under the wholesale trade NAICS code.

* * * * *

■ 11. Revise § 121.404 to read as follows:

§ 121.404 When does SBA determine the size status of a business concern?

(a) SBA determines the size status of a concern, including its affiliates, as of the date the concern submits a written self-certification that it is small to the procuring activity as part of its initial offer (or other formal response to a solicitation) which includes price. Where an agency modifies a solicitation so that initial offers are no longer responsive to the solicitation, a concern must recertify that it is a small business at the time it submits a responsive offer, which includes price, to the modified solicitation.

(b) A concern applying to be certified as a Participant in SBA's 8(a) Business Development program (under part 124, subpart A, of this chapter), as a small disadvantaged business (under part 124, subpart B, of this chapter), or as a HUBZone small business (under part 126 of this chapter) must qualify as a small business for its primary industry classification as of the date of its application and the date of certification by SBA.

(c) The size status of an applicant for a Certificate of Competency (COC) relating to an unrestricted procurement is determined as of the date of the concern's application for the COC.

(d) Size status for purposes of compliance with the nonmanufacturer rule set forth in § 121.406(b)(1) and the ostensible subcontractor rule set forth in § 121.103(h)(4) is determined as of the date of the final proposal revision for negotiated acquisitions and final bid for sealed bidding.

(e) For subcontracting purposes, a concern must qualify as small as of the date that it certifies that it is small for the subcontract. The applicable size standard is that which is set forth in § 121.410 and which is in effect at the time the concern self-certifies that it is small for the subcontract.

(f) For purposes of two-step sealed bidding under subpart 14.5 of the FAR, 48 CFR, a concern must qualify as small as of the date that it certifies that it is small as part of its step one proposal.

(g) A concern that qualified as a small business at the time it receives a contract is considered a small business throughout the life of that contract. Where a concern grows to be other than small, the procuring agency may exercise options and still count the award as an award to a small business.

(h) A follow-on or renewal contract is a new contracting action. As such, size is determined as of the date the concern submits a written self-certification that it is small to the procuring agency as part of its initial offer including price for the follow-on or renewal contract.

(i) At the time a novation or change-of-name agreement has been executed pursuant to FAR subpart 42.12, the new entity must submit a written self-certification that it is small to the procuring agency so that the agency can count the award, options, or orders issued pursuant to the contract towards its small business goals.

■ 12. Amend § 121.406 by revising the heading; by revising paragraph (b)(1)(ii); by revising the last sentence in paragraph (b)(2) introductory text; by redesignating paragraphs (b)(2)(i) and (b)(2)(ii) as paragraphs (b)(2)(i)(A) and (b)(2)(i)(B); by adding a new paragraph (b)(2)(i) introductory text; by removing the word "and" at the end of newly redesignated paragraph (b)(2)(i)(A); by removing the "." and adding "; and" at the end of newly redesignated paragraph (b)(2)(i)(B); by adding a new paragraph (b)(2)(i)(C); by adding a new paragraph (b)(2)(ii); and by adding a new paragraph (e) to read as follows:

§ 121.406 How does a small business concern qualify to provide manufactured products under small business set-aside or 8(a) contracts?

* * * * *

(b) *Nonmanufacturers.* (1) * * *

(ii) Is primarily engaged in the retail or wholesale trade and normally sells the type of item being supplied; and

* * * * *

(2) * * * Firms that add substances, parts, or components to an existing end item to modify its performance will not be considered the end item manufacturer where those identical modifications can be performed by and are available from the manufacturer of the existing end item:

(i) SBA will evaluate the following factors in determining whether a concern is the manufacturer of the end item:

(A) * * *

(B) * * *

(C) The concern's technical capabilities; plant, facilities and equipment; production or assembly line processes; packaging and boxing operations; labeling of products; and product warranties.

* * * * *

(ii) Firms that provide computer and other information technology equipment primarily consisting of component parts (such as motherboards, video cards, network cards, memory, power supplies, storage devices, and similar items) who install components totaling less than 50% of the value of the end item are generally not considered the manufacturer of the end item.

* * * * *

(e) These requirements do not apply to small business concern subcontractors.

■ 13. In § 121.410, revise the introductory paragraph, and remove paragraphs (a), (b) and (c) to read as follows:

§ 121.410 What are the size standards for SBA's Section 8(d) Subcontracting Program?

For subcontracting purposes pursuant to sections 8(d) of the Small Business Act, a concern is small for subcontracts which relate to Government procurements if it does not exceed the size standard for the NAICS code that the prime contractor believes best describes the product or service being acquired by the subcontract. However, subcontracts for engineering services awarded under the National Energy Policy Act of 1992 have the same size standard as Military and Aerospace Equipment and Military Weapons under NAICS 541213.

■ 14. In § 121.411(a), remove the words "SBA's Procurement Automated Source System (PASS)" and add, in its place, the words "the Central Contractor Registration (CCR)."

■ 15. Revise the undesignated center heading before § 121.601 to read as follows:

Size Eligibility Requirements for the 8(a) Business Development Program

■ 16. Revise § 121.601 to read as follows:

§ 121.601 What is a small business for purposes of admission to SBA's 8(a) Business Development program?

An applicant must not exceed the size standard corresponding to its primary industry classification in order to qualify for admission to SBA's 8(a) Business Development Program.

§ 121.602 [Amended]

■ 17. In § 121.602 replace the acronym "MED" in the heading and the text with the phrase "8(a) BD."

§ 121.603 [Amended]

■ 18. In § 121.603 replace the acronym "MED" in the heading and in paragraphs (a), (b) and (d) with the phrase "8(a) BD."

§ 121.604 [Amended]

■ 19. In § 121.604 replace the acronym "MED" in the heading and the text with the phrase "8(a) BD."

■ 20. Revise § 121.704 to read as follows:

§ 121.704 When does SBA determine the size status of a business concern?

The size status of a concern for the purpose of a funding agreement under the SBIR program is determined as of the date of the award for both Phase I and Phase II SBIR awards or on the date of the request for a size determination, if an award is pending.

■ 21. In § 121.705, revise paragraph (a) to read as follows:

§ 121.705 Must a business concern self-certify its size status?

(a) A firm must self-certify that it currently meets the eligibility requirements set forth in § 121.702 of this title or will meet those eligibility requirements on the date of award of a funding agreement for a Phase I or Phase II SBIR award.

* * * * *

■ 22. Amend § 121.1001 by revising paragraphs (a)(1) introductory text, (a)(1)(i), (a)(2)(i), (a)(5)(i) and (iii), (a)(6)(i), (a)(7) introductory text, and (b)(2)(ii)(B), and by adding new paragraphs (b)(1)(iii), (b)(7), (b)(8), and (b)(9) as follows:

§ 121.1001 Who may initiate a size protest or request a formal size determination?

(a) *Size Status Protests.* (1) For SBA's Small Business Set-Aside Program, including the Property Sales Program, or any instance in which a procurement or order has been restricted to or reserved for small business or a particular group of small business, the following entities may file a size protest in connection with a particular procurement, sale or order:

(i) Any offeror whom the contracting officer has not eliminated for reasons unrelated to size;

* * * * *

(2) * * *

(i) Any offeror whom the contracting officer has not eliminated for reasons unrelated to size;

* * * * *

(5) * * *

(i) Any offeror for the specific SDB requirement whom the contracting officer has not eliminated for reasons unrelated to size;

(ii) * * *

(iii) The responsible SBA Area Director for Government Contracting, the SBA Associate Administrator for Government Contracting, or the SBA Associate Administrator for 8(a) Business Development;

(6) * * *

(i) Any concern that submits an offer for a specific HUBZone set-aside procurement that the contracting officer has not eliminated for reasons unrelated to size;

* * * * *

(7) For any unrestricted Government procurement in which a business concern has represented itself as a small business concern, the following entities may protest in connection with a particular procurement:

* * * * *

(b)(1) * * *

(iii) The SBA Associate Administrator for Investment or designee may request a formal size determination for any purpose relating to the SBIC program (*see* part 107 of this chapter) or the NMVC program (*see* part 108 of this chapter). A formal size determination includes a request to determine whether or not affiliation exists between two or more entities for any purpose relating to the SBIC program.

* * * * *

(2) * * *

(ii) * * *

(B) The SBA program official with authority to execute the 8(a) contract or, where applicable, the procuring activity contracting officer who has been delegated SBA's 8(a) contract execution functions; or

* * * * *

(7) In connection with initial or continued eligibility for the Small Disadvantaged Business (SDB) program, the following may request a formal size determination:

(i) The applicant or SDB concern; or

(ii) The Assistant Administrator of the Division of Program Certification and Eligibility or the Associate Administrator for 8(a)BD.

(8) In connection with initial or continued eligibility for the HUBZone program, the following may request a formal size determination:

(i) The applicant or HUBZone concern; or

(ii) The Associate Administrator for the HUBZone program, or designee.

(9) For purposes of validating that firms listed in the Central Contractor Registration database are small, the Government Contracting Area Director or the Associate Administrator for Government Contracting may initiate a formal size determination when sufficient information exists that calls into question a firm's small business status. The current date will be used to determine size, and SBA will initiate the process to remove from the database the small business designation of any firm found to be other than small.

■ 23. In § 121.1004, add new paragraphs (a)(4) and (a)(5), and add a new sentence at the end of paragraph (b) to read as follows:

§ 121.1004 What time limits apply to size protests?

(a) * * *

(4) *Electronic notification of award.* Where notification of award is made electronically, such as posting on the Internet under Simplified Acquisition Procedures, a protest must be received by the contracting officer before close of business on the fifth day, exclusive of Saturdays, Sundays, and legal holidays, after the electronic posting.

(5) *No notice of award.* Where there is no requirement for written pre-award notice or notice of award, or where the contracting officer has failed to provide written notification of award, the 5-day protest period will commence upon oral notification by the contracting officer or authorized representative or another means (such as public announcements or other oral communications) of the identity of the apparent successful offeror.

(b) * * * Notwithstanding paragraph (e), for purposes of the SBIR program the contracting officer and SBA may file a protest in anticipation of award.

* * * * *

■ 24. Revise the first sentence of § 121.1005 to read as follows:

§ 121.1005 How must a protest be filed with the contracting officer?

A protest must be delivered to the contracting officer by hand, telegram, mail, facsimile, Federal Express or other overnight delivery service, e-mail, or telephone. * * *

■ 25. In § 121.1007, add a new sentence at the end of paragraph (c) and the following examples after paragraph (c):

§ 121.1007 Must a protest of size status relate to a particular procurement and be specific?

* * * * *

(c) * * * The following are examples of allegation specificity:

Example 1: An allegation that concern X is large because it employs more than 500 employees (where 500 employees is the applicable size standard) without setting forth a basis for the allegation is non-specific.

Example 2: An allegation that concern X is large because it exceeds the 500 employee size standard (where 500 employees is the applicable size standard) because a higher employment figure was published in publication Y is sufficiently specific.

Example 3: An allegation that concern X is affiliated with concern Y without setting forth any basis for the allegation is non-specific.

Example 4: An allegation that concern X is affiliated with concern Y because Mr. A is the majority shareholder in both concerns is sufficiently specific.

Example 5: An allegation that concern X has revenues in excess of $5 million (where $5 million is the applicable size standard) without setting forth a basis for the allegation is non-specific.

Example 6: An allegation that concern X exceeds the size standard (where the applicable size standard is $5 million) because it received Government contracts in excess of $5 million last year is sufficiently specific.

■ 26. In § 121.1008, revise the heading and paragraphs (a) and (d) to read as follows:

§ 121.1008 What occurs after SBA receives a size protest or request for a formal size determination?

(a) When SBA receives a size protest, the SBA Area Director for Government Contracting, or designee, will notify the contracting officer, the protested concern, and the protestor that the protest has been received. If the protest pertains to a requirement involving SBA's HUBZone program, the Area Director will also notify the AA/HUB of the protest. If the protest pertains to a requirement involving SBA's SBIR Program, the Area Director will also notify the Assistant Administrator for Technology. If the protest involves the size status of a concern that SBA has certified as a small disadvantaged business (SDB) (*see* part 124, subpart B of this chapter) the Area Director will notify SBA's AA/8(a) BD. If the protest pertains to a requirement that has been reserved for competition among eligible 8(a) BD program participants, the Area Director will notify the SBA district office servicing the 8(a) concern whose size status has been protested. SBA will provide a copy of the protest to the protested concern together with SBA Form 355, Application for Small Business Size Determination, by certified mail, return receipt requested, or by any overnight delivery service that provides proof of receipt. SBA will ask the protested concern to complete the form and respond to the allegations in the protest.

* * * * *

(d) If a concern whose size status is at issue fails to submit a completed SBA Form 355, responses to the allegations of the protest, or other requested information within the time allowed by SBA, or if it submits incomplete information, SBA may presume that disclosure of the information required by the form or other missing information would demonstrate that the concern is other than a small business. A concern whose size status is at issue must furnish information about its alleged affiliates to SBA, despite any third party claims of privacy or confidentiality, because SBA will not disclose information obtained in the course of a size determination except as permitted by Federal law.

■ 27. In § 121.1009, revise paragraphs (b) and (g) to read as follows:

§ 121.1009 What are the procedures for making the size determination?

* * * * *

(b) *Basis for determination.* The size determination will be based primarily on the information supplied by the protestor or the entity requesting the size determination and that provided by the concern whose size status is at issue. The determination, however, may also be based on grounds not raised in the protest or request for size determination. SBA may use other information and may make requests for additional information to the protestor, the concern whose size status is at issue and any alleged affiliates, or other parties.

* * * * *

(g) *Results of an SBA Size Determination.*

(1) A formal size determination becomes effective immediately and remains in full force and effect unless and until reversed by OHA.

(2) A contracting officer may award a contract based on SBA's formal size determination.

(3) If the formal size determination is appealed to OHA, the OHA decision on appeal will apply to the pending procurement or sale if the decision is received before award. OHA decisions received after contract award will not apply to that procurement or sale, but will have future effect, unless the contracting officer agrees to apply the OHA decision to the procurement or sale.

(4) Once SBA has determined that a concern is other than small for purposes of a particular procurement, the concern cannot later become eligible for the procurement by reducing its size.

(5) A concern determined to be other than small under a particular size standard is ineligible for any procurement or any assistance authorized by the Small Business Act or the Small Business Investment Act of 1958 which requires the same or a lower size standard, unless SBA recertifies the concern to be small pursuant to § 121.1010 or OHA reverses the adverse size determination. After an adverse size determination, a concern cannot self-certify as small under the same or lower size standard unless it is first recertified as small by SBA. If a concern does so, it may be in violation of criminal laws, including section 16(d) of the Small Business Act, 15 U.S.C. 645(d). If the concern has already certified itself as small on a pending procurement or on an application for SBA assistance, the concern must immediately inform the officials responsible for the pending procurement or requested assistance of the adverse size determination.

* * * * *

■ 28. Revise § 121.1101 to read as follows:

§ 121.1101 Are formal size determinations subject to appeal?

(a) Appeals from formal size determinations may be made to OHA. Unless an appeal is made to OHA, the size determination made by a SBA Government Contracting Area Office or Disaster Area Office is the final decision of the agency. The procedures for appealing a formal size determination to OHA are set forth in part 134 of this chapter. The OHA appeal is an administrative remedy that must be exhausted before judicial review of a formal size determination may be sought in a court.

(b) OHA will not review a formal size determination where the contract has been awarded and the issue(s) raised in a petition for review are contract specific, such as compliance with the nonmanufacturer rule (*see* § 121.406(b)), or joint venture or ostensible subcontractor rule (*see* § 121.103(h)).

■ 29. Revise § 121.1103 to read as follows:

§ 121.1103 What are the procedures for appealing a NAICS code designation?

(a) Any interested party adversely affected by a NAICS code designation may appeal the designation to OHA. The only exception is that, for a sole source contract reserved under SBA's 8(a) Business Development program (*see*

part 124 of this chapter), only SBA's Associate Administrator for 8(a) Business Development may appeal the NAICS code designation.

(b) The contracting officer's determination of the applicable NAICS code is final unless appealed as follows:

(1) An appeal from a contracting officer's NAICS code designation and applicable size standard must be served and filed within 10 calendar days after the issuance of the initial solicitation. OHA will summarily dismiss an untimely NAICS code appeal.

(2)(i) The appeal petition must be in writing and must be sent to the Office of Hearings & Appeals, U.S. Small Business Administration, 409 3rd Street, SW., Suite 5900, Washington, DC 20416.

(ii) There is no required format for a NAICS code appeal, but an appeal must include the following information: the solicitation or contract number; the name, address, and telephone number of the contracting officer; a full and specific statement as to why the NAICS code designation is erroneous, and argument in support thereof; and the name, address and telephone number of the appellant or its attorney.

(3) The appellant must serve the appeal petition upon the contracting officer who assigned the NAICS code to the acquisition and SBA's Office of General Counsel, Associate General Counsel for Procurement Law, 409 3rd Street, SW., Washington, DC 20416.

(4) Upon receipt of a NAICS code appeal, OHA will notify the contracting officer by notice and order of the date OHA received the appeal, the docket number, and the Judge assigned to the case. The contracting officer's response to the appeal must include argument and supporting evidence (*see* part 134, subpart C, of this chapter) and must be received by OHA within 10 calendar days from the date of the docketing notice and order, unless otherwise specified by the Judge. Upon receipt of OHA's docketing notice and order, the contracting officer must immediately send to OHA a copy of the solicitation relating to the NAICS code appeal.

(5) After close of the record, OHA will issue a decision and inform all interested parties, including the appellant and contracting officer. If OHA's decision is received by the contracting officer before the date offers are due, the solicitation must be amended if the contracting officer's designation of the NAICS code is reversed. If OHA's decision is received by the contracting officer after the due date of initial offers, the decision will not apply to the pending procurement, but will apply to future solicitations for the same products or services.

■ 30. Revise § 121.1205 to read as follows:

§ 121.1205 How is a list of previously granted class waivers obtained?

A list of classes of products for which waivers of the Nonmanufacturer Rule have been granted is maintained in SBA's Web site at *www.sba.gov/GC/approved.html*. A list of such waivers may also be obtained by contacting the Office of Government Contracting, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416, or the nearest SBA Government Contracting Area Office.

PART 124—8(A) BUSINESS DEVELOPMENT/SMALL DISADVANTAGED BUSINESS STATUS DETERMINATIONS

■ 31. The authority citation for 13 CFR part 124 is revised to read as follows:

Authority: 15 U.S.C. 634(b)(6), 636(j), 637(a), 637(d) and Pub. L. 99–661, Pub. L. 100–656, sec. 1207, Pub. L. 101–37, Pub. L. 101–574, and 42 U.S.C. 9815.

■ 32. Revise § 124.513(a)(1) to read as follows:

§ 124.513 Under what circumstances can a joint venture be awarded an 8(a) contract?

(a) *General.* (1) If approved by SBA, a Participant may enter into a joint venture agreement with one or more other small business concerns, whether or not 8(a) Participants, for the purpose of performing one or more specific 8(a) contracts.

* * * * *

■ 33. Revise § 124.520(d)(1) to read as follows:

§ 124.520 Mentor/protégé program.

* * * * *

(d) *Benefits.* (1) A mentor and protégé may joint venture as a small business for any government procurement, including procurements with a dollar value less than half the size standard corresponding to the assigned NAICS code and 8(a) sole source contracts, provided the protégé qualifies as small for the procurement and, for purposes of 8(a) sole source requirements, the protégé has not reached the dollar limit set forth in § 124.519.

* * * * *

■ 34. Amend § 124.1002(f)(3), by removing "13 CFR 121.103(f)(3)" and by adding, in its place, "13 CFR 121.103(h)(3)".

PART 125—GOVERNMENT CONTRACTING PROGRAMS

■ 35. The authority citation for 13 CFR part 125 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6), 637 and 644; 31 U.S.C. 9701, 9702.

■ 36. Revise § 125.6(g) to read as follows:

§ 125.6 Prime contractor performance requirements (limitations on subcontracting).

* * * * *

(g) Where an offeror is exempt from affiliation under § 121.103(h)(3) of this chapter and qualifies as a small business concern, the performance of work requirements set forth in this section apply to the cooperative effort of the joint venture, not its individual members.

PART 134—RULES OF PROCEDURE GOVERNING CASES BEFORE THE OFFICE OF HEARINGS AND APPEALS

■ 37. The authority citation for 13 CFR part 134 continues to read as follows:

Authority: 5 U.S.C. 504; 15 U.S.C. 632, 634(b)(6), 637(a), 648(l), 656(i), and 687(c); E.O. 12549, 51 FR 6370, 3 CFR, 1986 Comp., p. 189.

■ 38. Revise the definition of "size determination" in § 134.101 as follows:

§ 134.101 Definitions.

* * * * *

Size determination means a formal size determination made by an Area Office and includes decisions by Government Contracting Area Directors that determine whether two or more concerns are affiliated for purposes of SBA's financial assistance programs, or other programs for which an appropriate SBA official requested an affiliation determination.

■ 39. Revise § 134.102(k) to read as follows:

§ 134.102 Jurisdiction of OHA.

* * * * *

(k) Appeals from size determinations and NAICS code designations under part 121 of this chapter. "Size determinations" include decisions by Government Contracting Area Directors that determine whether two or more concerns are affiliated for purposes of SBA's financial assistance programs, or other programs for which an appropriate SBA official requested an affiliation determination;

* * * * *

■ 40. Revise § 134.305(c) as follows:

§ 134.305 The appeal petition.

* * * * *

(c) *Service of NAICS appeals.* The appellant must serve the contracting officer who made the NAICS code designation and SBA's Office of General Counsel, Associate General Counsel for

Procurement Law, 409 3rd Street, SW., Washington, DC 20416.

* * * * *

■ 41. In § 134.314, revise the heading and add the following sentence at the end to read as follows:

§ 134.314 Standard of review and burden of proof.

* * * The appellant has the burden of proof, by a preponderance of the evidence, in both size and NAICS code appeals.

■ 42. Revise § 134.316(a) by adding the following sentence at the end to read as follows:

§ 134.316 The decision.

(a) * * * The Judge will not decide substantive issues raised for the first time on appeal, or which have been abandoned or become moot.

* * * * *

Dated: April 28, 2004.

Hector V. Barreto,

Administrator.

[FR Doc. 04–10066 Filed 5–20–04; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–237–AD; Amendment 39–13642; AD 2004–10–12]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10–30 Airplane

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to a certain McDonnell Douglas Model DC–10–30 airplane, that requires an inspection of the power feeder cable assembly of the auxiliary power unit (APU) for chafing, correct type of clamps, and proper clamp installation; and corrective actions, if necessary. This action is necessary to prevent the loss of the APU generator due to chafing of the generator power feeder cables, and consequent electrical arcing and smoke/fire in the APU compartment. This action is intended to address the identified unsafe condition.

DATES: Effective June 25, 2004.

The incorporation by reference of a certain publication listed in the regulations is approved by the Director of the Federal Register as of June 25, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; 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.*

FOR FURTHER INFORMATION CONTACT: Natalie Phan-Tran, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5343; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to a certain McDonnell Douglas Model DC–10–30 airplane was published in the **Federal Register** on March 5, 2004 (69 FR 10366). That action proposed to require an inspection of the power feeder cable assembly of the auxiliary power unit (APU) for chafing, correct type of clamps, and proper clamp installation; and corrective actions, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 1 Model DC–10–30 airplane, having fuselage number 0106, of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required inspection, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the required inspection on U.S. operators is estimated to be $65.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

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 adding the following new airworthiness directive:

2004–10–12 McDonnell Douglas: Amendment 39–13642. Docket 2002–NM–237–AD.

Applicability: Model DC–10–30 airplane, fuselage number 0106; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the loss of the auxiliary power unit (APU) generator due to chafing of the generator power feeder cables, and consequent electrical arcing and smoke/fire in the APU compartment, accomplish the following:

Inspection and Corrective Action(s), if Necessary

(a) Within 12 months after the effective date of this AD, do a general visual inspection of the power feeder cable assembly of the APU for chafing, correct type (including part number) of clamps, and proper clamp installation, per Boeing Alert Service Bulletin DC10–24A137, Revision 02, dated October 15, 2001.

Note 1: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(1) Condition 1. If no signs of wire chafing are found, and all clamps are of the correct type (including the correct part number) and are installed properly, no further action is required by this AD.

(2) Condition 2. If any wire chafing, incorrect type of any clamp (including incorrect part number), or improper clamp installation is found, before further flight, do the applicable corrective action(s) (*e.g.*, repair, replace, and modify discrepant part) per the Accomplishment Instructions of the service bulletin.

Actions Accomplished per Previous Issues of Service Bulletin

(b) Accomplishment of the inspection and any applicable corrective actions, per Boeing Service Bulletin DC10–24–137, dated September 15, 1987; or Boeing Alert Service Bulletin DC10–24A137, Revision 01, dated May 31, 2001; before the effective date of this AD, is considered acceptable for compliance with the requirements of this AD.

Accomplishment of the Actions per AD 2001–24–22

(c) Accomplishment of the actions specified in AD 2001–24–22, amendment 39–12539, is acceptable for compliance with the requirements of this AD.

Alternative Methods of Compliance

(d) In accordance with 14 CFR 39.19, the Manager, Los Angeles Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance for this AD.

Incorporation by Reference

(e) Unless otherwise specified in this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin DC10–24A137, Revision 02, dated October 15, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; 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.*

Effective Date

(f) This amendment becomes effective on June 25, 2004.

Issued in Renton, Washington, on May 10, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–11284 Filed 5–20–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89–ANE–10–AD; Amendment 39–13644; AD 2004–10–14]

RIN 2120–AA64

Airworthiness Directives; Lycoming Engines (Formerly Textron Lycoming), Direct-Drive Reciprocating Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) that supersedes an existing AD, for Lycoming Engines (formerly Textron Lycoming), direct-drive reciprocating engines (except O–145, O–320H, O–360E, LO–360E, LTO–360E, O–435, and TIO–541 series engines). That AD currently requires inspection of the crankshaft gear installation and rework or replacement of the gears where necessary after a propeller strike, sudden stoppage, at overhaul, or whenever gear train repair is required. This AD requires the same actions but makes the correction that the existing gear retaining bolt and lockplate be removed from service and new hardware installed, and revises the definitions for sudden stoppage and propeller strike. This AD results from a change to the definition of a propeller strike or sudden stoppage. We are issuing this AD to prevent loosening or failure of the crankshaft gear retaining bolt, which may cause sudden engine failure.

DATES: This AD becomes effective June 25, 2004. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of June 25, 2004.

ADDRESSES: You can get the service information identified in this AD from Lycoming Engines, 652 Oliver Street, Williamsport, PA 17701, U.S.A.; telephone (570) 323–6181; fax (570) 327–7101 or from the Lycoming Web site: *www.lycoming.textron.com.main.jsp.*

You may examine the AD docket at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA. You may examine the service information at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; 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.*

FOR FURTHER INFORMATION CONTACT: Norm Perenson, Aerospace Engineer, New York Aircraft Certification Office, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone (516) 228–7337; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR Part 39, by superseding an AD with a proposed airworthiness directive (AD). The proposed AD applies to Lycoming Engines direct-drive reciprocating engines (except O–145, O–320H, O–360E, LO–360E, LTO–360E, O–435, and TIO–541 series engines). We published the proposed AD in the **Federal Register** on March 25, 2003 (68 FR 14350). That action proposed to require inspection of

the crankshaft gear installation and rework or replacement of the gears where necessary after a propeller strike, sudden stoppage, at overhaul, or whenever gear train repair is required. That action also proposed to revise the definitions for sudden stoppage and propeller strike.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

Provide a Trigger Level for Action

One commenter requests that the proposed AD should provide a trigger level to alert maintenance personnel of the need for action. The commenter states that this is required to avoid having maintenance personnel determine the need for action. Also, this would avoid miscommunication between the pilot and the maintenance personnel. The commenter also states that the proposed AD is too general for proper action in the field.

The FAA does not agree. Section 91.7(b) of the Code of Federal Regulations (14 CFR 91.7(b)) states: "The pilot in command of a civil aircraft is responsible for determining whether that aircraft is in condition for safe flight." The pilot must advise the maintenance technician and inspector of the need to perform maintenance. It is also the responsibility of the maintenance technician and or inspector to advise the pilot when an unsafe condition is found during routine maintenance. The actions required by this AD, like many other situations in aviation, may require some judgment on the part of the pilot, maintenance technician, and or inspector, as well as good communication among all parties. Adding additional conditions will only require more judgment and more decisions by all parties involved.

AD as Written Will Require Unneeded Inspections

One commenter states that the proposed AD would require unneeded inspections by "tying the hands" of knowledgeable mechanics. The commenter also states that the final determination regarding needed inspections should be made by the maintenance personnel in the field. The commenter further states that the mechanics are in the best position to evaluate the factors surrounding each incident, and to determine which engine components should be inspected.

The FAA does not agree. The wording in this AD is designed to assist the mechanics when deciding on what action to take in a given situation. Based on Lycoming's engine design knowledge and worldwide service experience, certain situations are known to have caused engine problems. This AD is not designed to "tie the hands of the mechanic". The AD is intended to help the pilot in command and maintenance personnel make the best possible maintenance decision.

Correction to the Compliance

As a correction to the compliance, we added paragraphs to require the existing gear retaining bolt and lockplate be removed from service and a new bolt and lockplate be installed, and to prohibit installation of the removed hardware into any engine. This correction places the AD in agreement with the referenced SB.

Conclusion

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD. The assigned paragraph letters in the regulatory section have been changed from what appeared in the proposal, as we are continuing our introduction of plain language into our documents.

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

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

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

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

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include "AD Docket No. 89–ANE–10–AD" in your request.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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. The FAA amends § 39.13 by removing Amendment 39–6916 (56 FR 33205, July 19, 1991), and by adding the following new airworthiness directive (AD):

2004–10–14 Lycoming Engines (formerly Textron Lycoming): Amendment 39–13644. Docket No. 89–ANE–10–AD. Supersedes AD 91–14–22, Amendment 39–6916.

Effective Date

(a) This AD becomes effective June 25, 2004.

Affected ADs

(b) This AD supersedes AD 91–14–22.

Applicability

(c) This AD applies to Lycoming Engines (formerly Textron Lycoming), direct-drive reciprocating engines (except O–145, O–320H, O–360E, LO–360E, LTO–360E, O–435, and TIO–541 series engines).

Unsafe Condition

(d) This AD results from a change to the definition of a propeller strike or sudden stoppage. The actions specified in this AD are intended to prevent loosening or failure of the crankshaft gear retaining bolt, which may cause sudden engine failure.

Compliance

(e) Compliance with this AD is required as indicated before further flight if the engine has experienced a propeller strike as defined in paragraphs (i) and (j) of this AD, unless already done.

(f) Inspect, and if necessary repair, the crankshaft counter bored recess, the alignment dowel, the bolt hole threads, and the crankshaft gear for wear, galling, corrosion, and fretting in accordance with steps 1 through 5 of Lycoming Mandatory Service Bulletin (MSB) No. 475C, dated January 30, 2003.

(g) Remove the existing gear retaining bolt and lockplate from service, and install a new bolt and lockplate, in accordance with steps 6 and 7 of Lycoming MSB No. 475C, dated January 30, 2003.

Prohibition of Retaining Bolt and Lockplate

(h) Do not install the gear retaining bolt and lockplate that were removed in paragraph (g) of this AD, into any engine.

Definition of Propeller Strike

(i) For the purposes of this AD, a propeller strike is defined as follows:

(1) Any incident, whether or not the engine is operating, that requires repair to the propeller other than minor dressing of the blades.

(2) Any incident during engine operation in which the propeller impacts a solid object that causes a drop in revolutions per minute (RPM) and also requires structural repair of the propeller (incidents requiring only paint touch-up are not included). This is not restricted to propeller strikes against the ground.

(3) A sudden RPM drop while impacting water, tall grass, or similar yielding medium, where propeller damage is not normally incurred.

(j) The preceding definitions include situations where an aircraft is stationary and the landing gear collapses causing one or more blades to be substantially bent, or where a hanger door (or other object) strikes the propeller blade. These cases should be handled as sudden stoppages because of potentially severe side loading on the crankshaft flange, front bearing, and seal.

Alternative Methods of Compliance

(k) The Manager, New York Aircraft Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Material Incorporated by Reference

(l) You must use Lycoming MSB No. 475C, dated January 30, 2003, to perform the inspections and repairs required by this AD. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You can get a copy from Lycoming Engines, 652 Oliver Street, Williamsport, PA 17701, U.S.A; telephone (570) 323–6181; fax (570) 327–7101. You can review copies at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; 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.*

Related Information

(m) None.

Issued in Burlington, Massachusetts, on May 12, 2004.

Peter A. White,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 04–11406 Filed 5–20–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–39–AD; Amendment 39–13645; AD 2004–10–15]

RIN 2120–AA64

Airworthiness Directives; GARMIN International Inc. GTX 330 Mode S Transponders and GTX 330D Diversity Mode S Transponders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA adopts a new airworthiness directive (AD) for certain GARMIN International Inc. GTX 330/GTX 330D Mode S transponders that are installed on aircraft. This AD requires you to install GTX 330/330D Software Upgrade Version 3.03, 3.04, or 3.05. This AD is the result of observations that the GTX 330 and GTX 330D may detect, from other aircraft, the S1 (suppression) interrogating pulse below the Minimum Trigger Level (MTL) and, in some circumstances, not reply. The GTX 330/330D should still reply even if it detects S1 interrogating pulses below the MTL. We are issuing this AD to prevent interrogating aircraft from possibly receiving inaccurate replies due to suppression from aircraft equipped with the GTX 330/330D Mode S Transponders when the pulses are below the MTL. The inaccurate replies could result in reduced vertical separation or unsafe TCAS resolution advisories.

DATES: This AD becomes effective on July 9, 2004.

As of July 9, 2004, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

ADDRESSES: You may get the service information identified in this AD from GARMIN International Inc., 1200 East 151st Street, Olathe, KS 66062, (913) 397–8200.

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–39–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Roger A. Souter, FAA, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: 316–946–4134; facsimile: 316–946–4107; e-mail address: *roger.souter@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? The GTX 330/GTX 330D may detect from other aircraft the S1 (suppression) interrogating pulse below the MTL and, in some circumstances, does not reply. The GTX 330/330D should still reply even if it detects S1 interrogating pulses below the MTL. GARMIN International Inc. suspected the suppression problem after observation between GARMIN company aircraft that were equipped with the GTX 330 and Ryan Traffic and Collision Alert Device (TCAD). Engineering bench tests and test flights confirmed that this suppression problem existed.

What is the potential impact if FAA took no action? Interrogating aircraft could possibly receive inaccurate replies due to suppression from aircraft equipped with the GTX 330/330D Mode S Transponders when the pulses are below the MTL. The inaccurate replies could result in reduced vertical separation or unsafe TCAS resolution advisories.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain GARMIN International Inc. GTX 330/330D Mode S transponders that are installed on aircraft. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on December 30, 2003 (68 FR 75174). The NPRM proposed to require you to install GTX 330/330D Software Upgrade Version 3.03.

Comments

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

Comment Issue: GTX 330/330D Software Upgrade Version 3.03

What is the commenter's concern? The NPRM currently requires installation of GTX 330/330D Software Upgrade to Version 3.03 to comply with the proposed AD. Two commenters request a text change of the AD to allow installation of later software upgrade versions to comply with the proposed AD.

What is FAA's response to the concern? Since later software upgrade versions will contain, at a minimum, the elements of Version 3.03 and thus will correct the unsafe condition, we agree with their request and have changed the

text from "Version 3.03" to "Version 3.03, 3.04, or 3.05."

Conclusion

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

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

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

Changes to 14 CFR Part 39—Effect on the AD

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

Cost of Compliance

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

What is the cost impact of this AD on owners/operators of the affected airplanes? Garmin International Inc. will reimburse the 1.0 hours required for this modification per the most current GTX 330 Software Service Bulletin. This reimbursement will follow Garmin's warranty Policies and Procedures stating that the most current software, which includes this update and all other updates, should be installed.

Compliance Time of This AD

What will be the compliance time of this AD? The compliance time of this AD is within 30 days after the effective date of the AD.

Why is the compliance time presented in calendar time instead of hours time-in-service (TIS)? The unsafe condition exists or could develop on airplanes equipped with the affected equipment regardless of airplane operation. For example, the unsafe condition has the same chance of occurring on an airplane with 50 hours TIS as it does on one with 5,000 hours TIS. Therefore, we are presenting the compliance time of this AD in calendar time instead of hours TIS.

Regulatory Findings

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

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

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

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

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

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include "AD Docket No. 2003–CE–39–AD" in your request.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2004–10–15 Garmin International Inc.: Amendment 39–13645; Docket No. 2003–CE–39–AD.

When Does This AD Become Effective?

(a) This AD becomes effective on July 9, 2004.

What Other ADs Are Affected by This Action?

(b) None.

What Airplanes Are Affected by This AD?

(c) This AD affects GARMIN International Inc. GTX 330/330D Mode S transponders that are installed on, but not limited to, the following airplanes, certificated in any category:

Manufacturer	Model
(1) Aermacchi S.p.A	S.205–18/F, S.205–18/R, S.205–20/R, S.205–22/R, S.208, S.208A, F.260, F.260B, F.260C, F.260D, F.260E, F.260F, S.211A.
(2) Aeronautica Macchi S.p.A	AL 60, AL 60–B, AL 60–F5, AL 60–C5, AM–3.
(3) Aerostar Aircraft Corporation	PA–60–600 (Aerostar 600), PA–60–601 (Aerostar 601), PA–60–601P (Aerostar 601P), PA–60–602P (Aerostar 602P), PA–60–700P (Aerostar 700P), 360, 400.
(4) Alexandria Aircraft, LLC	14–19, 14–19–2, 14–19–3, 14–19–3A, 17–30, 17–31, 17–31TC, 17–30A, 17–31A, 17–31ATC.
(5) Alliance Aircraft Group LLC	15A, 20, H–250, H–295, (USAFU–10D), HT–295, H391 (USAFYL–24), H391B, H–395 (USAFL–28A or U–10B), H–395A, H–700, H–800, HST–550, HST–550A (USAF AU–24A), 500.
(6) American Champion Aircraft Corp	402, 7GCA, 7GCB, 7KC, 7GCBA, 7GCAA, 7GCBC, 7KCAB, 8KCAB, 8GCBC.
(7) Sky International Inc	A–1, A–1A, A–1B, S–1S, S–1T, S–2, S–2A, S–2S, S–2C.
(8) B–N Group Ltd	BN–2, BN–2A, BN–2A–2, BN–2A–3, BN–2A–6, BN–2A–8, BN–2A–20, BN–2A–21, BN–2A–26, BN–2A–27, BN–2B–20, BN–2B–21, BN–2A–26, BN–2A–27, BN–2B–20, BN–2B–21, BN–2B–26, BN–2B–27, BN–2T, BN–2T–4R, BN–2A MK.III, BN2A MK.III–2, BN2A MK.111–3.
(9) Bellanca	14–13, 14–13–2. 14–13–3. 14–13–3W.
(10) Bombardier Inc	(Otter) DHC–3, DHC–6–1, DHC–6–100, DHC–6–200, DHC–6–300.

Manufacturer	Model
(11) Cessna Aircraft Company	170, 170A, 170B, 172, 172A, 172B, 172C, 172D, 172E, 172F (USAF T–41A), 172G, 172H, (USAF T041A), 172I, 172K, 172L, 172M, 172N, 172P, 172Q, 172R, 172S, 172RG, P172D, R172E (USAF T–41 B) (USAF T–41 C AND D), R172F (USAF T–41 D), R175G, R172H (USAF T–41 D), R172J, R172K, 175, 175A, 175B, 175C, 177, 177A, 177B, 177RG, 180, 180A, 180B, 180C, 180D, 180E, 180F, 180G, 180H, 180J, 180K, 182, 182A, 182B, 182C, 182D, 182E, 182F, 182G, 182H, 182J, 182K, 182L, 182M, 182N, 182P, 182Q, 182R, 182S, 182T, R182, T182, TR182, T182T, 185, 185A, 185B, 185C, 185D, 185E, A185E, A185F, 190, (LC–126A, B, C) 195, 195A, 195B, 210, 210A, 210B, 210C, 210D, 210E, 210F, T210F, 210G, T210G, 210H, T210H, 210J, T210J, 210K, T210K, 210L, T210L, 210M, T210M, 210N, P210N, T210N, 210R, P210R, T210R, 210–5 (205), 210–5A (205A), 206, P206, P206A, P206B, P206C, P206D, P206E, TP206A, TP206B, TP206C, TU206D, TU206E, TU206F, TU206G, 206H, T206H, 207, 207A, T207, T207A, 208, 208A, 208B, 310, 310A (USAF U–3A), 310B, 310C, 310D, 310E (USAF U–3B), 310F, 310G, 310H, E310H, 310I, 310J, 310J–1, E310J, 310K, 310L, 310N, 310P, T310P, 310Q, T310Q, 310R, T310R, 320, 320A, 320B, 320C, 320D, 320E, 320F, 320–1, 335, 340, 340A, 336, 337, 337A (USAF 02B), 337B, T337B, 337C, 337E, T337E, T337C, 337D, T337D, M337B (USAF 02A), 337F, T337F, T337G, 337G, 337H, P337H, T337H, T337H–SP, 401, 401A, 401B, 402, 402A, 402B, 402C, 411, 411A, 414, 414A, 421, 421A, 421B, 421C, 425, 404, 406, 441.
(12) Cirrus Design Corporation	SR20, SR22.
(13) Commander Aircraft Company	112, 112TC, 112B, 112TCA, 114, 114A, 114B, 114TC.
(14) de Havilland Inc	DHC–2 Mk. I, DHC–2 Mk. II, DHC–2 Mk. III.
(15) Dynac Aerospace Corporation	(Volaire) 10, (Volaire) 10A, (Aero Commander) 100, (Aero Commander) 100A, (Aero Commander) 100–180.
(16) Diamond Aircraft Industries	DA–20–A1, DA20–C1, DA 40.
(17) Empressa Brasileira de Aeronautica S.A. EMBRAER.	EMB–110P1, EMB–110PE.
(18) Extra Flugzeugbau Gmbh	EA300, EA300L, EA300S, EA300/200, EA–400.
(19) Fairchild Aircraft Corporation	SA26–T, SA26–AT, SA226–T, SA226–AT, SA226–T(B), SA227–AT, SA227–TT, SA226–TC, SA227–AC (C–26A), SA227–CC, SA227–DC (C–26B).
(20) Global Amphibians, LLC	Colonial C–1, Colonial C–2, Lake LA–4, Lake LA–4A, Lake LA–4P, Lake LA–4–200, Lake Model 250.
(21) Grob-Werke	G115, G115A, G115B, G115C, G115C2, G115D, G115D2, G115EG, G120A.
(22) Lancair Company	LC40–550FG.
(23) LanShe Aerospace, LLC	MAC–125C, MAC–145, MAC–145A, MAC–145B.
(24) Learjet Inc	23.
(25) Lockheed Aircraft Corporation	18.
(26) Luscombe Aircraft Corporation	11A, 11E.
(27) Maule Aerospace Technology, Inc	Bee Dee M–4, M–4, M–4C, M–4S, M–4T, M–4180C, M–4–180S, M–4–180T, M–4–210, M–4–210C, M–4–210S, M–4–210T, M–4–220, M–4–220S, M–4–220T, M–5–180C, M–5–200, M–5–210C, M–5–210TC, M–5–220C, M–5–235C, M–6–180, M–6–235, M–7–235, MX–7–235, MX–7–180, MX–7–420, MXT–7–180, MT–7–235, M–8–235, MX–7–160, MXT–7–160, MX–7–180A, MXT–7–180A, MXT–7–180B, M–7–235B, M–7–235A, M–7–235C, M–7–180C, M–7–260, MT–7–260, M–7–260C, M–7–420AC, MX–7–160C, MX–7–180AC, M–7–420A, MT–7–420.
(28) Mitsubishi Heavy Industries, Ltd	MU–2B–25, MU–2B–35, MU–2B–26, MU–2B–36, MU–2B–26A, MU–2B–36A, MU–2B–40, MU–2B–60, MU–2B, MU–2B–20, MU–2B–20, MU–2B–15.
(29) Mooney Airplane Company, Inc	M20, M20A, M20B, M20C, M20D, M20E, M20F, M20G, M20J, M20K, M20L, M20M, M20R, M20S, M22.
(30) Moravan a.s	Z–242L, Z–143L.
(31) Navion Aircraft Company, Ltd	NAVION, Navion (L–17A), Navion (L–17B), Navion (L–17C), Navion B, Navion D, Navion E, Navion F, Navion G, Navion H.
(32) New Piper Aircraft, Inc	PA–12, PA–12S, PA–18, PA–18S, PA–18 "105" (Special), PA–18S "105" (Special), PA–18A, PA–18 "125" (Army L–21A), PA–18S "125," PA–18AS "125," PA–18 "135" (Army L–21B), PA–18A "135," PA–18S "135," PA–18 "150," PA–18A "150," PA–18S "150," PA–18AS "150," PA–19 (Army L–18B), PA–19S, PA–20, PA–20S, PA–20 "115," PA–20S "115," PA–20 "135," PA–20S "135," PA–22, PA–22–108, PA–22–135, PA–22S–135, PA–22–150, PA–22S–150, PA–22–160, PA–22S–160, PA–23, PA–23–160, PA–23–235, PA–23–250, PA–E23–250, PA–24, PA–24–250, PA–24–260, PA–24–400, PA–28–140, PA–28–150, PA–28–151, PA–28–160, PA–28–161, PA–28–180, PA–28–235, PA–28S–160, PA–28R–180, PA–28S–180, PA–28–181, PA–28R–200, PA–28R–201, PA–28R–201T, PA–28RT–201, PA–28RT–201T, PA–28–201T, PA–28–236, PA–30, PA–39, PA–40, PA–31P, PA–31T, PA–31T1, PA–31T2, PA–31T3, PA–31P–350, PA–32–260, PA–32–300, PA–32S–300, PA–32R–300, PA–32RT–300, PA–32RT–300T, PA–32R–301 (SP), PA–32R–301 (HP), PA–32R–301T, PA–32–301, PA–32–301T, PA–34–200, PA–34–200T, PA–34–220T, PA–42, PA–42–720, PA–42–1000, PA–42–720R, PA–44–180, PA–44–180T, PA–46–310P, PA–46–350P, PA–46–500TP.
(33) Ostmecklenburgische Flugzeugbau GmgH	OMF–100–160.
(34) Piaggio Aero Industries S.p.A	P–180.
(35) Pilatus Aircraft Ltd	PILATUS PC–12, PILATUS PC–12/45, PC–6, PC–6–H1, PC–6–H2, PC–6/350, PC–6/350–H1, PC–6/350–H2, PC–6/A, PC–6/A–H1, PA–6/A–H2, PC–6/B–H2, PC–6/B1–H2, PC–6/B2–H2, PC–6/B2–H4, PC–6/C–H2, PC–6/C1–H2, PC–7.
(36) Prop-Jets, Inc	200, 200A, 200B, 200C, 200D, 400.
(37) Panstwowe Zakladv Lotnicze (PZL)	PZL–104 WILGA 80, PZL–104M WILGA 2000, PZL–WARSZAWA, PZL–KOLIBER 150A, PZL–KOLIBER 160A.

Manufacturer	Model
(38) PZL WSK/Mielec Obrsk	PZL M20 03, PZL M26 01.
(39) Raytheon	35–33, 35–A33, 35–B33, 35–C33, 35–C33A, E33, E33A, E33C, F33, F33A, F33C, G33, H35, J35, K35, M35, N35, P35, S35, V35, V35A, V35B, 36, A36, A36TC, B36TC, 35, A35, B35, C35, D35, E35, F35, G35, 35R, F90, 76, 200, 200C, 200CT, 200T, A200, B200, B200C, B200CT, B200T, 300, 300LW, B300, B300C, 1900, 1900C, 1900D, A100–1 (U–21J), A200 (C–12A), A200 (C–12C), A200C (UC–12B), A200CT (C–12D), A200CT (FWC–12D), A200CT (RC–12D), A200CT (C–12F), A200CT (RC–12G), A200CT (RC–12H), A200CT (RC–12K), A200CT (RC–12P), A200CT (RC–12Q), B200C (C–12F), B200C (UC–12F), B200C (UC–12M), B200C (C–12R), 1900C (C–12J), 65, A65, A65–8200, 65–80, 65–A80, 65–A80–8800, 65–B80, 65–88, 65–A90, 70, B90, C90, C90A, E90, H90, 65–A90–1, 65–A90–2, 65–A90–3, 65–A90–4, 95, B95, B95A, D95A, E95, 95–55, 95–A55, 95–B55, 95–B55A, 95–B55B (T–42A), 95–C55, 95–C55A, D55, D55A, E55, E55A, 56TC, A56TC, 58, 58A, 58P, 58PA, 58TC, 58TCA, 99, 99A, 99A (FACH), A99, A99A, B99, C99, 100, A100 (U–21F), A100A, A100C, B100, 2000, 3000, 390, 19A, B19, M19A, 23, A23, A23A, A23–19, A23–24, B23, C23, A24, A24R, B24R, C24R, 60, A60, B60, 18D, A18A, A18D, S18D, SA18A, SA18D, 3N, 3NM, 3TM, JRB–6, D18C, D18S, E18S, RC–45J (SNB–5P), E18S–9700, G18S, H18, C–45G, TC–45G, C–45H, TC–45H, TC–45J, UC–45J (SNB–5), 50 (L–23A), B50 (L–23B), C50, D50 (L–23E), D50A, D50B, D50C, D50E–5990, E50 (L–23D, RL–23D), F50, G50, H50, J50, 45 (YT–34), A45 (T–34A or B–45), D45 (T–34B).
(40) Rockwell International Corporation	BC–1A, AT–6 (SNJ–2), AT–6A (SNJ–3), AT–6B, AT–6C (SNJ–4), AT–6D (SNJ–5), AT–6F (SNF–6), SNJ–7, T–6G, NOMAD NA–260.
(41) Short Brothers & Harland Ltd	SC–7 Series 2, SC–7 Series 3.
(42) Slingsby Aviation Ltd	T67M260, T67M260–T3A.
(43) SOCATA—Group Aerospatiale	TB9, TB10, TB20, TB21, TB200, TBM 700, M.S. 760, M.S. 760 A, M.S. 760 B, Rallye 100S, Rallye 150ST, Rallye 150T, Rallye 235E, Rallye 235C, MS 880B, MS 885, MS 894A, MS 893A, MS 892A–150, MS 892E–150, MS 893E, MS 894E, GA–7.
(44) Tiger Aircraft LLC	AA–1, AA–1A, AA–1B. AA–1C, AA–5, AA–5A, AA–5B, AG–5B.
(45) Twin Commander Aircraft Corporation	500, 500–A, 500–B, 500–U, 500–S, 520, 560, 560–A, 560–E, 560F, 680, 680E, 680F, 680FL, 680FL(P), 680T, 680V, 680W, 681, 685, 690, 690A, 690B, 690C, 690D, 695, 695A, 695B, 720, 700.
(46) Univair Aircraft Corporation	108, 108–1, 108–2, 108–3, 108–5.
(47) Vulcanair S.p.A	P68, P68B, P68C, P68C–TC, P68 "Observer," P68 "Observer 2," P68TC "Observer," AP68TP300 "Spartacus," AP68TP 600 "Viator".
(48) Zenair Ltd	CH2000.

What Is the Unsafe Condition Presented in This AD?

(d) The actions specified in this AD are intended to prevent interrogating aircraft from possibly receiving inaccurate replies, due to suppression, from aircraft equipped with the GTX 330/330D Mode S Transponders when the pulses are below the Minimum Trigger Level (MTL). The inaccurate replies could result in vertical separation or unsafe TCAS resolution advisories.

What Must I Do To Address This Problem?

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

Actions	Compliance	Procedures
Install GTX 330/330D Software Upgrade to at least Version 3.03, 3.04, or 3.05.	Install the software upgrade within 30 days after July 9, 2004 (the effective date of this AD), unless already done.	Follow GARMIN Mandatory Software Service Bulletin No.: 0304, Rev B, dated June 12, 2003 (SW Version 3.03); Garmin Software Service Bulletin No. 0310, Rev A, dated November 10, 2003 (SW Version 3.04); or Garmin Software Service Bulletin No. 0401, Rev A, dated February 18, 2004 (SW Version 3.05).

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Wichita Aircraft Certification Office (ACO), FAA. For information on an already approved alternative methods of compliance, contact Roger A. Souter, FAA, Witchita ACO, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: 316–946–4134; facsimile: 316–946–4107; e-mail address: *roger.souter@faa.gov*.

Does This AD Incorporate Any Material by Reference?

(g) You must do the actions required by this AD following the instructions in GARMIN Mandatory Software Service Bulletin No.: 0304, Rev B, dated June 12, 2003 (SW Version 3.03); Garmin Software Service Bulletin No. 0310, Rev A, dated November 10, 2003 (SW Version 3.04); or Garmin Software Service Bulletin No. 0401, Rev A, dated February 18, 2004 (SW Version 3.05). The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may get a copy from GARMIN International Inc. 1200 East 151st Street, Olathe, KS 66062. You may review copies at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Issued in Kansas City, Missouri, on May 13, 2004.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–11438 Filed 5–20–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–343–AD; Amendment 39–13641; AD 2004–10–11]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ series airplanes equipped with Pacific Scientific engine fire extinguisher bottles. This amendment would require a one-time inspection to detect discrepancies in the wiring installation of the engine fire extinguisher bottles, and related investigative/corrective actions as necessary. This action is necessary to prevent the inability of the left-hand fire extinguisher on one or more engines to discharge, and consequent inability to control or suppress an engine fire. This action is intended to address the identified unsafe condition.

DATES: Effective June 25, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 25, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; 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.*

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ series airplanes equipped with Pacific Scientific engine fire extinguisher bottles was published in the **Federal Register** on March 17, 2004 (69 FR 12585). That action proposed to require a one-time inspection to detect discrepancies in the wiring installation of the engine fire extinguisher bottles, and related investigative/corrective actions as necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 54 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the required actions, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $10,530, or $195 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

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 adding the following new airworthiness directive:

2004–10–11 Bae Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Amendment 39–13641. Docket 2002–NM–343–AD.

Applicability: Model BAe 146 and Avro 146–RJ series airplanes, equipped with Pacific Scientific engine fire extinguisher bottles, and having BAE Systems (Operations) Limited Modification HCM01688A, and either HCM01582A or HCM01582B installed; certificated in any category;

Compliance: Required as indicated, unless accomplished previously.

To prevent the inability of the left-hand fire extinguisher bottle on one or more engines to discharge, and consequent inability to control or suppress an engine fire, accomplish the following:

Inspection, Test, and Related Investigative/Corrective Actions

(a) Within 6 months after the effective date of this AD: Do a one-time detailed inspection to detect discrepancies in the wiring installation of the fire extinguisher bottles for the engines, a one-time test of the wiring for the indicating system of the engine fire extinguishing system, and all applicable related investigative/corrective actions, per the Accomplishment Instructions of BAE

Systems (Operations) Limited Inspection Service Bulletin ISB.26–065, dated September 16, 2002. Do all of the actions per the service bulletin. Any corrective actions must be done before further flight. Although the service bulletin specifies to submit certain information to the manufacturer, this AD does not include such a requirement.

Note 1: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Credit for Actions Done per Other Service Information

(b) For airplanes with BAE Systems (Operations) Limited Modification HCM01582B installed: Accomplishment of BAE Systems (Operations) Limited Inspections Service Bulletin 26–060 (Inspection for Cross Connection of Wiring on Pacific Scientific Fire Extinguishers) on each engine is considered acceptable for compliance with the requirements of this AD.

Alternative Methods of Compliance

(c) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, is authorized to approve alternative methods of compliance for this AD.

Incorporation by Reference

(d) Unless otherwise specified in this AD, the actions shall be done in accordance with BAE Systems (Operations) Limited Inspection Service Bulletin ISB.26–065, dated September 16, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; 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.*

Note 2: The subject of this AD is addressed in British airworthiness directive 003–09–2002.

Effective Date

(e) This amendment becomes effective on June 25, 2004.

Issued in Renton, Washington, on May 10, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–11283 Filed 5–20–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–171–AD; Amendment 39–13639; AD 2004–10–09]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited Model BAe 146 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain BAE Systems (Operations) Limited Model BAe 146 series airplanes, that requires repetitive detailed inspections for heat damage to any in-line splice in the auxiliary power unit (APU) and integrated drive generator (IDG) feeder cable circuits, and corrective action if necessary. This AD also provides for optional terminating action for the repetitive inspections. This action is necessary to prevent overheating of the in-line splices of the APU and IDG feeder cables, which can lead to smoke, fumes, and possible fire in the flight deck and cabin. This action is intended to address the identified unsafe condition.

DATES: Effective June 25, 2004.

The incorporation by reference of a certain publication listed in the regulations is approved by the Director of the Federal Register as of June 25, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; 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.*

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain BAE Systems (Operations) Limited Model BAe 146 series airplanes was published in the **Federal Register** on March 17, 2004 (69 FR 12592). That action proposed to require repetitive detailed inspections for heat damage to any in-line splice in the auxiliary power unit (APU) and integrated drive generator (IDG) feeder cable circuits, and corrective action if necessary. The proposed AD also provided for optional terminating action for the repetitive inspections.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Correction to Cost Information

The cost information specified in the proposed AD inadvertently contained an erroneous figure. The estimated cost of the optional terminating action was understated as "between $1,069 and $2,847 per airplane." The cost information, below, has been revised to show the correct figure.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 17 airplanes of U.S. registry will be affected by this AD, that it will take approximately 6 work hours per airplane to accomplish the required inspections, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $6,630, or $390 per airplane, per inspection cycle.

The optional terminating action, if done, will take approximately between 5 and 30 work hours per airplane, at an average labor rate of $65 per work hour. Required parts will cost approximately between $744 and $1,379 per airplane.

Based on these figures, we estimate the cost of the optional terminating action to be between $1,069 and $3,329 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

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 adding the following new airworthiness directive:

2004–10–09 Bae Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Amendment 39–13639. Docket 2003–NM–171–AD.

Applicability: Model BAe 146 series airplanes, as identified in BAE Systems (Operations) Limited Inspection Service Bulletin ISB.24–139, dated April 2, 2003; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent overheating of the in-line splices of the auxiliary power unit (APU) and integrated drive generator (IDG) feeder cables, which can lead to smoke, fumes, and possible fire in the flight deck and cabin, accomplish the following:

Inspection

(a) Within 6 months after the effective date of this AD, do a detailed inspection for heat damage to any in-line splice in the APU and IDG feeder cables, per the Accomplishment Instructions of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.24–139, dated April 2, 2003. If no heat damage is found, repeat the inspections thereafter at intervals not to exceed 12 months. Although the service bulletin specifies to report inspection findings to the airplane manufacturer, this AD does not include such a requirement.

Note 1: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Corrective Action

(b) If any heat damage is found during any inspection done per paragraph (a) of this AD: Prior to further flight, modify the damaged in-line splices in the APU and/or IDG feeder cable circuits, per paragraph 2.F., "Terminating Action," of the Accomplishment Instructions of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.24–139, dated April 2, 2003, as applicable.

Optional Terminating Action

(c) Modifying the in-line splices in the APU and/or the IDG feeder cable circuits, per the Terminating Action instructions of the Accomplishment Instructions of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.24–139, dated April 2, 2003, constitutes terminating action for this AD.

Alternative Methods of Compliance

(d) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, is authorized to approve alternative methods of compliance for this AD.

Incorporation by Reference

(e) The actions shall be done in accordance with BAE Systems (Operations) Limited Inspection Service Bulletin ISB.24–139, dated April 2, 2003. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; 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.*

Note 2: The subject of this AD is addressed in British airworthiness directive 005–04–2003.

Effective Date

(f) This amendment becomes effective on June 25, 2004.

Issued in Renton, Washington, on May 10, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–11286 Filed 5–20–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–64–AD; Amendment 39–13638; AD 2004–10–08]

RIN 2120–AA64

Airworthiness Directives; Alexander Schleicher GmbH & Co. Segelflugzeugbau Model ASH 25M Sailplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA adopts a new airworthiness directive (AD) for all Alexander Schleicher GmbH & Co. Segelflugzeugbau (Alexander Schleicher) Model ASH 25M sailplanes equipped with fuel injected engine IAE50R–AA. This AD requires you to inspect the fuel line for correct fittings, and, if any incorrect fitting is found, replace the fuel line. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. We are issuing this AD to

detect and correct any fuel lines with improper fittings, which could result in fuel leakage and a possible fire hazard.

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

As of July 6, 2004, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

ADDRESSES: You may get the service information identified in this AD from Alexander Schleicher GmbH & Co. Segelflugzeugbau, D–36163 Poppenhausen, Federal Republic of Germany; telephone: 011–49 6658 89–0; facsimile: 011–49 6658 89–40.

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–64–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Greg Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified FAA that an unsafe condition may exist on Alexander Schleicher sailplanes. The LBA reports that an incorrect fitting at one end of a fuel line was installed during production of the Model ASH 25M sailplane equipped with fuel injected engine IAE50R–AA. The incorrect fitting includes a combination of sealing cones. After maintenance, the incorrect combination of sealing cones inside the fittings might cause a fuel leak.

What is the potential impact if FAA took no action? Any fuel line with improper fittings could result in fuel leakage and a possible fire hazard.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Alexander Schleicher Model ASH 25M sailplanes equipped with fuel injected engine IAE50R–AA. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on February 11, 2004 (69 FR 6585). The NPRM proposed to require you to inspect the fuel line for correct fittings, and, if any incorrect fitting is found, replace the fuel line.

Comments

Was the public invited to comment? We provided the public the opportunity to participate in developing this AD. We received no comments on the proposal or on the determination of the cost to the public.

Conclusion

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

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

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

Changes to 14 CFR Part 39—Effect on the AD

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

Costs of Compliance

How many airplanes does this AD impact? We estimate that this AD affects 2 sailplanes in the U.S. registry.

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

Labor cost	Parts cost	Total cost per sailplane	Total cost on U.S. operators
1 workhour at $65 per hour = $65	Not Applicable	$65	$130

We estimate the following costs to accomplish any necessary replacement that will be required based on the results of this inspection. We have no way of determining the number of sailplanes that may need this replacement:

Labor cost	Parts cost	Total cost per sailplane
1 workhour × $65 per hour = $65	$160	$65 + $160 = $225

Regulatory Findings

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

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

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

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

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

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include "AD Docket No. 2003–CE–64–AD" in your request.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2004–10–08 Alexander Schleicher GmbH & Co. Segelflugzeugbau: Amendment 39–13638; Docket No. 2003–CE–64–AD.

When Does This AD Become Effective?

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

What Other ADs Are Affected by This Action?

(b) None.

What Sailplanes Are Affected by This AD?

(c) This AD affects all Model ASH 25M sailplanes, all serial numbers, that are:

(1) certificated in any category; and

(2) equipped with fuel injected engine IAE50R–AA.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified in this AD are intended to detect and correct fuel lines with improper fittings, which could result in fuel leakage and a possible fire hazard.

What Must I Do To Address This Problem?

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

Actions	Compliance	Procedures
(1) Inspect the fuel line between the injection valve and pressure regulator for the correct color of connecting fittings (The connecting fitting at the injection valve must be blue and the connecting fitting at the pressures regulatory must be black.).	Within the next 50 hours time-in-service (TIS) after July 6, 2004 (the effective date of this AD), unless already done.	Follow Alexander Schleicher GmbH & Co. Segelflugzeugbau ASH 25 Mi Technical Note No. 22, dated February 21, 2003.
(2) If you find any fuel line with blue connecting fittings at both ends, then replace the fuel line with a fuel line with a blue connecting fitting at the injection valve and a black connecting fitting at the pressure regulator.	Before further flight after the inspection required by paragraph (e)(1) of this AD.	Follow Alexander Schleicher GmbH & Co. Segelflugzeugbau ASH 25 Mi Technical Note No. 22, dated February 21, 2003.
(3) Do not install any fuel line that uses blue connecting fittings at both ends.	As of July 6, 2004 (the effective date of this AD).	Not Applicable.

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Standards Office, Small Airplane Directorate, FAA. For information on any already approved alternative methods of compliance, contact Greg Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; facsimile: (816) 329–4090.

Does This AD Incorporate Any Material by Reference?

(g) You must do the actions required by this AD following the instructions in Alexander Schleicher GmbH & Co. Segelflugzeugbau ASH 25 Mi Technical Note No. 22, dated February 21, 2003. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may get a copy from Alexander Schleicher GmbH & Co. Segelflugzeugbau, D–36163 Poppenhausen, Federal Republic of Germany; telephone: 011–49 6658 89–0; facsimile: 011–49 6658 89–40. You may review copies at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Is There Other Information That Relates to This Subject?

(h) German AD Number 2003–129, dated March 21, 2003, also addresses the subject of this AD.

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

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–11370 Filed 5–20–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0230]

21 CFR Part 110

Food; Current Good Manufacturing Practice Regulations; Public Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meetings.

SUMMARY: The Food and Drug Administration (FDA) is announcing three public meetings to solicit comments, data, and scientific information about the current state of quality management techniques, quality systems approaches, and voluntary industry standards concerning current good manufacturing practices and other controls used by food manufacturers and processors to prevent, reduce, control, or eliminate food borne hazards that can occur during food production or processing. The meetings are intended to elicit information about FDA's current good manufacturing practice (CGMP) in manufacturing, packing, or holding human food regulations. This information will be useful in determining appropriate revisions to these regulations. We ask that those who speak at the meetings or otherwise provide FDA with their comments focus on our questions given in section II of this document about the CGMP regulations and other quality management techniques. There also will be an opportunity to address small business concerns at the meetings.

DATES: The public meetings will be held in College Park, MD, on Friday, June 11, 2004, from 9 a.m. to 12 noon; in

Monterey, CA, on Friday, July 2, 2004, from 1 p.m. to 4 p.m.; and in Chicago, IL, on Wednesday, July 21, 2004, from 2 p.m. to 5 p.m. You should register for any of the meetings by fax or e-mail (see **FOR FURTHER INFORMATION CONTACT**). For security reasons and due to space limitations, we recommend that you register at least 5 days prior to the meeting you wish to attend. You may register by fax or e-mail until close of business 5 days before the meeting you wish to attend, provided that space is available. In addition to participating at the public meetings, you may submit written or electronic comments until September 10, 2004.

ADDRESSES: The public meeting on Friday, June 11, 2004, will be held at the Food and Drug Administration, Center for Food Safety and Applied Nutrition, 5100 Paint Branch Pkwy., College Park, MD 20740–3835. The public meeting on Friday, July 2, 2004, will be held at the Monterey Conference Center, One Portola Plaza, Monterey, CA 93940. The public meeting on Wednesday, July 21, 2004, will be held at the Marriott Chicago Downtown, 540 North Michigan Ave., Chicago, IL 60611.

You may submit comments, identified with Docket No. 2004N–0230, 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*. Include Docket No. 2004N–0230 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. 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 the "Comments" heading of the **SUPPLEMENTARY INFORMATION** section 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.

FOR FURTHER INFORMATION CONTACT: Peter J. Vardon, Center for Food Safety and Applied Nutrition (HFS–726), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD, 301–436–1830, FAX 301–436–2626, or e-mail: *pvardon@cfsan.fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

FDA last revised its CGMP regulations for food (part 110 (21 CFR part 110)) in 1986 (51 FR 22458, June 19, 1986). The primary purpose of the revision was to establish new, updated, or more detailed provisions concerning food industry personnel; plants and grounds; sanitary facilities, controls, and operations; equipment and utensils, warehousing, and distribution; and natural or unavoidable defect levels. FDA designed the revised CGMP regulations to help ensure the safe and sanitary manufacturing, processing, and holding of food for human consumption.

In the almost 20 years since the food CGMPs were revised, the food industry has undergone considerable change, and the agency believes that it is now time to revisit these regulations and determine appropriate revisions to better ensure a safe and sanitary food supply. FDA believes that a good first step is to obtain the views of the industry and the public generally by holding a series of public meetings. The three public meetings are intended to provide interested parties an opportunity to comment on what revisions to the CGMPs FDA should consider. The meetings are also intended to fulfill part of the outreach requirement of the Small Business Regulatory Enforcement Fairness Act of 1996.

FDA has drafted the questions set out in this document to help focus comments presented at the public meetings or otherwise communicated to the agency. One area of particular agency focus is potential hazards in the food supply. Generally speaking, there are three categories of hazards that may be present during the production or warehousing of food: Physical hazards (such as the presence of glass fragments in food), chemical hazards (such as the unintended presence of a cleaning solution in food), and microbiological hazards (such as the presence of *Listeria monocytogenes* in ready-to-eat foods).

In responding to the questions set out in this document, please address, to the extent you are able, each of the three types of hazards discussed in the previous paragraph. FDA is particularly interested in receiving comments about food manufacturing practices and other controls used by small food manufacturing and processing entities.

II. Questions

In general, do the current good manufacturing regulations (part 110) need to be revised or otherwise modernized? If yes, please describe generally the shortcomings of the current regulations.

1. Which practices specified in current part 110 are most effective at preventing each type of food hazard? Which practices are least effective at such prevention?
2. In today's food manufacturing environment, what conditions, practices, or other factors are the principal contributors to each type of food hazard?
3. If the CGMP regulations were revised, which type or types of food hazards could be most readily prevented through CGMP-type controls?
4. Are there preventive controls, in addition to those set out in part 110, needed to reduce, control, or eliminate each of the three types of food hazards? If yes, please identify the specific hazard and the particular controls, that would reduce, control, or eliminate the hazard.
5. What concepts or underlying principles should guide FDA's adoption of new preventive controls?
6. How should the effectiveness of preventive controls for each of the three types of hazards be most accurately measured?
7. In today's food manufacturing environment, what are the principal contributors to the presence of undeclared allergens in food? For example, do labeling errors or cross-contamination contribute? Which preventive controls could help reduce, control, or eliminate the presence of undeclared allergens in food?
8. Are there existing quality systems or standards (such as international standards) that FDA should consider as part of the agency's exploration of food CGMP modernization? Please identify these systems or standards and explain what their consideration might contribute to this effort.
9. There is a broad variation within the food manufacturing and processing industry, including variations in size of establishments, the nature of the food produced, the degree to which the food is processed, and the vulnerability of a particular operation to physical, chemical, or microbial hazards. How, if at all, should the CGMP regulations be revised to take into account such

variation? For example, should there be different sets of preventive controls for identifiable segments of the food industry, such as different storage temperature limits?

10. There are a number of measures, procedures, and programs that help to ensure that preventive controls are carried out adequately. These include the following items:

- Training programs for managers and/or workers;
- Audit programs;
- Written records, e.g., batch records, sanitation records;
- Validation of control measures;
- Written sanitation standard operating procedures;
- Food label review and control program; and
- Testing of incoming raw materials, inprocess materials, or finished products.

Which (if any) of these should be required practices for food and manufacturers and why? Which (if any) of these should be recommended practices for food manufacturers and processors and why?

11. Are there preventive controls in addition to those already set out in part 110 for food distributors, wholesalers, and warehousers that are needed to help ensure the safe and sanitary holding of food? If yes, please identify the controls by hazard and sector of the industry.

III. Registration

You should register for any of the meetings by fax or e-mail (see **FOR FURTHER INFORMATION CONTACT**). For security reasons and due to space limitations, we recommend that you register at least 5 days prior to the meeting you wish to attend. Registration will be accepted on a space-available basis. You may register until close of business June 4, 2004, for the College Park meeting, close of business on June 25, 2004, for the Monterey meeting, and close of business July 15, 2004, for the Chicago meeting. If you need special accommodations due to a disability, please inform the contact person at least 7 days in advance (see **FOR FURTHER INFORMATION CONTACT**). Please include your name, title, firm name, address, telephone number, and e-mail address (if available) when you register. FDA encourages individuals or firms with relevant data or information to present such information at the meeting or in written comments to the record. If you would like to make oral comments at one of the meetings, please specify your interest in speaking when you register. The amount of time for each oral presentation may be limited due to the number of requests to speak.

IV. Transcripts

A transcript will be made of the proceedings of each meeting. You may request a copy of a meeting transcript in writing from FDA's Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 30 working days after the public meetings at a cost of 10 cents per page. The transcript of each public meeting and all comments submitted will be available for public examination at the Division of Dockets Management (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday.

V. Comments

In addition to presenting oral comments at a public meeting, interested persons may submit (see **ADDRESSES**) written or electronic comments on the subject of these meetings. 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 the brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 18, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–11611 Filed 5–19–04; 1:17 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF STATE

22 CFR Parts 121 and 123

[Public Notice 4723]

Z–RIN 1400–ZA10

Amendment to the International Traffic in Arms Regulations: United States Munitions List

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State, in consultation with the Departments of Defense and Commerce has reviewed the International Traffic ln Arms Regulations (ITAR), Part 121—The United States Munitions List (USML), Category IX—Military Training Equipment, Category X—Protective Personnel Equipment, Category XII—Fire Control, Range Finder, Optical and Guidance and Control Equipment, Category XIII—Auxiliary Military Equipment, Category XIV—Toxicological Agents, Including Chemical Agents, Biological Agents, and Associated Equipment, and Category XVIII—Directed Energy Weapons. The review resulted in a change of the title of Categories IX and X to better reflect the items controlled in each category. Consistent with previous published changes to other categories, Categories IX, X, and XIII have been revised to add interpretations that explain and amplify the terms used in the category. The categories were also reformatted in order that they might better identify the articles controlled. While no additional items have been added to any of the categories, some articles, previously covered more broadly are now specifically identified in separate paragraphs.

In addition, this document incorporates an amendment to the text of Category XIV as published in the **Federal Register** on November 27, 2002 to account for the existence of personal protection devices for domestic applications such as civil defense that provide protection against the chemical and biological agents controlled by the Category and that integrate components and parts subject to the controls of the International Traffic in Arms Regulations (ITAR). This revision transfers to the jurisdiction of the Department of Commerce certain articles previously controlled on the USML.

Finally, in complying with Presidential Determination No. 2004–02 of October 6, 2003, Presidential Determination No. 2004–16 of December 30, 2003, and Presidential Determination No. 2004–21 of January 15, 2004, the ITAR is being amended to add the Philippines, Thailand, and Kuwait as major non-NATO allies of the United States.

DATES: *Effective Date:* May 21, 2004.

ADDRESSES: Interested parties are invited to submit written comments to the Department of State, Directorate of Defense Trade Controls, Office of Defense Trade Controls Policy, ATTN: Regulatory Change, USML Part 121, Categories IX, X, XII, XIII, XIV, and XVIII, 12th Floor, SA–1, Washington DC 20522–0112. E-mail comments may be sent to: *DTCPResponseTeam@state.gov* with the subject line: USML Review—Category (specify). Comments will be accepted at any time.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Tomchik, Office of Defense Trade Controls Policy, Department of State, Telephone (202) 663–2799 or FAX (202) 261–8199. ATTN: Regulatory Change, USML Part 121, Categories IX, X, XII, XIII, XIV and XVIII.

SUPPLEMENTARY INFORMATION: The specific results of the Department of State lead interagency review by category are as follows:

1. Category IX

The review of Category IX—Military Training Equipment resulted in no change in the coverage, but the scope of coverage was clarified by adding the word "training" to the title of the category. However, added to the list of items identified as a trainer are pilot-less aircraft and human rated centrifuge trainers. In addition, certain trainers are consolidated (*e.g.*, attack trainers, instrument flight trainers, operational flight trainer and air combat training systems). A weapons system trainer includes any trainer that provides rules of engagement including flight, tactics, techniques and/or simulation. A radar trainer includes any trainer that provides training for radar operation and target systems. The absence of radar target generators from the list of items included as training equipment is not a change in coverage, but a determination that the radar target generator is a component, part, or accessory of a radar system and more appropriately controlled in Category XI.

Specific changes to the category are the identification in paragraph (c) of tooling and equipment specifically designed or modified for production of the items in the category. This resulted in components, parts, accessories, attachment, and associated equipment moving to paragraph (d) and technical data and defense services to a new paragraph (e). In addition, a new paragraph (f) contains interpretations that explain and amplify terms used in the category.

2. Category X

The review changed the title of the category to better reflect the items controlled. The title now reads Category X—Protective Personnel Equipment and Shelters. Also, it was determined that reformatting the category would provide better identification to users of the items controlled. To provide specified control levels for body armor an interpretive note was added to outline the standards established by the National Institute of Justice Classification. In addition, a threshold parameter for pressure suits with military applications was added. Category X now specifically identifies the controls of certain military protective equipment (*e.g.*, diving suits, goggles, glasses, visors). Similarly, the control of clothing designed to protect against sensor detection was clarified via the addition of a threshold parameter. Underwater breathing apparatus currently controlled in Category XIII are transferred to this category. Finally, having determined that they are more appropriately considered to be a component of an aircraft, liquid oxygen converters are transferred from paragraph (b) of this category to paragraph 8(h) of Category VIII and USML control is maintained on these commodities even though they no longer are specifically enumerated in the text.

To accomplish these changes paragraph (a) now controls protective personnel equipment, with subparagraphs for body armor, radar protective clothing, G-suits, full and partial pressure suits, submarine diving rescue suits, helmets designed to be compatible with communications hardware or optical sights/slewing devices, protective goggles, glasses or visors. With the movement of partial pressures suits to paragraph (a) of this category and the movement of liquid oxygen converters to Category VIII (h), paragraph (b) now contains permanent or transportable shelters. With the transfer of components, parts, accessories, attachments, and associated equipment currently in paragraph (c) and technical data and defense services currently in paragraph (d) to new paragraphs (d) and (e) respectively, paragraph (c) now controls tooling and equipment specifically designed or modified for the production of the articles controlled by the category. Finally, a new paragraph (f) is added to the category to provide interpretations that explain and amplify the terms used in the category.

3. Category XII

The Department of Commerce Export Commodity Control Numbers (ECCNs) found in paragraph (c) dealing with military second and third generation image intensification tubes and military infrared focal plane arrays that are part of a commercial system are corrected for accuracy.

4. Category XIII

The Military Information Security Systems in paragraph (b) are now described as Military Information Security Assurance Systems to more appropriately define the criteria for the evaluation of such systems. The language describing criteria in paragraph (b)(4) is changed to reflect current evaluation criteria. Paragraph (e) now controls armor and reactive armor not controlled elsewhere in this subchapter, while paragraph (f) controls certain specified structural materials. The current paragraphs (e) and (f) and redesignated (g) and (h) without any change in control. The chemiluminescent compounds currently in paragraph (g) are assessed to be more properly considered as components; those used for the detection or identification of chemical agents are covered under Category XIV as a component of chemical agent equipment, while solid state devices made from compounds designed or modified for military applications, such as semiconductors, are controlled in Category XI. The text referring to particle beam devices in paragraph (h) is transferred to Category XVIII—Directed Energy Weapons as an interpretive note. Paragraph (k) now controls tooling and equipment designed to produce the articles controlled by the category. Finally, a new paragraph (m) is added to the category to provide interpretations that explain and amplify the terms used in the category.

5. Category XIV

Since the publication on November 27, 2002 (67 FR 70839) of the revision to this category, information has become available demonstrating the existence of personal protection devices for domestic applications such as civil defense that integrate components and parts subject to the controls of the International Traffic in Arms Regulations (ITAR). As in the case of Category XII of the USML, wherein commercial systems that incorporate military second and third generation image intensification tubes and military focal plane arrays identified in the category are licensed by the Department of Commerce, commercial domestic preparedness devices that integrate components and parts subject to the controls of the ITAR will be licensed by the Department of Commerce. To effect this change, a new interpretive note is added to paragraph (n) of the Category, designated as (4), stating that domestic preparedness devices for individual protection that integrate components and parts identified in this subparagraph are licensed by the Department of Commerce when such components are: (1) Integral to the device; (2) inseparable from the device; and (3) incapable of replacement without compromising the effectiveness of the device. In addition, components and parts identified in this subparagraph exported for integration into domestic preparedness devices for individual protection are subject to the controls of the ITAR. Explanatory language currently in paragraph (f)(4) of the Category is transferred to and incorporated into the interpretive note. Because of the insertion of the new interpretive note (4) in paragraph (n),

the interpretative notes currently identified as (4), (5), and (6) are renumbered as (5), (6) and (7). In accordance with Section 38(f) of the Arms Export Control Act (AECA), as amended, this removal has been notified to the Congress and the Commerce Control List (CCL) control identified for this commodity is ECCN 1A004.

6. Category XVIII

As noted above under the discussion for Category XIII, paragraph (h) pertaining to particle beam devices is moved to this category as a new interpretive note designated (g)(2).

Regulatory Analysis and Notices

This amendment involves a foreign affairs function of the United States and, therefore, is not subject to the procedures required by 5 U.S.C. 553 and 554. It is exempt from review under Executive Order 12866; but has been reviewed internally by the Department of State to ensure consistency with the purposes thereof. This rule does not require analysis under the Regulatory Flexibility Act or the Unfunded Mandates Reform Act. It has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Act of 1996. It will not have substantial direct effects on the States, 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 rule does not have sufficient federalism implications to warrant application of consultation provisions of Executive Orders 12372 and 13132.

List of Subjects in 22 CFR Parts 121 and 123

Arms and munitions, Exports.

■ Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, Parts 121 and 123 are amended as follows:

PART 121—UNITED STATES MUNITIONS LIST

■ 1. The authority citation for Part 121 continues to read as follows:

Authority: Sec. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2278, 2797); E.O. 11958, 42 FR 4311; 3 CFR 1977 Comp. p. 79; 22 U.S.C. 2658; Pub. L. 105–261, 112 Stat. 1920.

§ 121.1 General. The United States Munitions List.

* * * * *

■ 2. Section 121.1 is amended as follows:

■ A. Revise Category IX—Military Training Equipment, Category X—Protective Personnel Equipment, and Category XIII—Auxiliary Military Equipment;

■ B. In Category XII revise paragraph (c)

■ C. In Category XIV revise paragraphs (f)(4) and (n)(4), (5), and (6) and add new paragraph (n)(7);

■ D. In Category XVIII, revise paragraphs (g)(2) and (3) and add new paragraph (g)(4).

The revisions and additions read as follows:

Category IX—Military Training Equipment and Training

(a) Training equipment specifically designed, modified, configured or adapted for military purposes, including but not limited to weapons system trainers, radar trainers, gunnery training devices, antisubmarine warfare trainers, target equipment, armament training units, pilot-less aircraft trainers, navigation trainers and human-rated centrifuges.

(b) Simulation devices for the items covered by this subchapter.

(c) Tooling and equipment specifically designed or modified for the production of articles controlled by this category.

(d) Components, parts, accessories, attachments, and associated equipment specifically designed, modified, configured, or adapted for the articles in paragraphs (a), (b) and (c) of this category.

(e) Technical data (as defined in § 120.10 of this subchapter) and defense services (as defined in § 120.9 of this subchapter) directly related to the defense articles enumerated in paragraphs (a) through (d) of this category.

(f) The following interpretations explain and amplify terms used in this category and elsewhere in this subchapter:

(1) The weapons systems trainers in paragraph (a) of this category include individual crew stations and system specific trainers;

(2) The articles in this category include any end item, components, accessory, part, firmware, software or system that has been designed or manufactured using technical data and defense services controlled by this category;

(3) The defense services and related technical data in paragraph (f) of this category include software and associated databases that can be used to simulate trainers, battle management, test scenarios/models, and weapons effects. In any instance when the military training transferred to a foreign person does not use articles controlled by the U.S. Munitions List, the training may nevertheless be a defense service that requires authorization in accordance with this subchapter. See *e.g.*, § 120.9 and § 124.1 of this subchapter for additional information on military training.

Category X—Protective Personnel Equipment and Shelters

(a) Protective personnel equipment specifically designed, developed, configured, adapted, modified, or equipped for military applications. This includes but is not limited to:

(1) Body armor;

(2) Clothing to protect against or reduce detection by radar, infrared (IR) or other sensors at wavelengths greater than 900 nanometers, and the specially treated or formulated dyes, coatings, and fabrics used in its design, manufacture, and production;

(3) Anti-Gravity suits (G-suits);

(4) Pressure suits capable of operating at altitudes above 55,000 feet sea level;

(5) Atmosphere diving suits designed, developed, modified, configured, or adapted for use in rescue operations involving submarines controlled by this subchapter;

(6) Helmets specially designed, developed, modified, configured, or adapted to be compatible with military communication hardware or optical sights or slewing devices;

(7) Goggles, glasses, or visors designed to protect against lasers or thermal flashes discharged by an article subject to this subchapter.

(b) Permanent or transportable shelters specifically designed and modified to protect against the effect of articles covered by this subchapter as follows:

(1) Ballistic shock or impact;

(2) Nuclear, biological, or chemical contamination.

(c) Tooling and equipment specifically designed or modified for the production of articles controlled by this category.

(d) Components, parts, accessories, attachments, and associated equipment specifically designed, modified, configured, or adapted for use with the articles in paragraphs (a) through (c) of this category.

(e) Technical data (as defined in § 120.10 of this subchapter) and defense services (as defined in § 120.9 of this subchapter) directly related to the defense articles enumerated in paragraphs (a) through (d) of this category.

(f) The following interpretations explain and amplify the terms used in this category and throughout this subchapter: (1) The body armor covered by this category does not include Type

1, Type 2, Type 2a, or Type 3a as defined by the National Institute of Justice Classification;

(2) The articles in this category include any end item, components, accessory, attachment, part, firmware, software or system that has been designed or manufactured using technical data and defense services controlled by this category;

(3) Pressure suits in paragraph (a) (4) of this category include full and partial suits used to simulate normal atmospheric pressure conditions at high altitude.

* * * * *

Category XII—Fire Control, Range Finder, Optical and Guidance and Control Equipment

* * * * *

* (c) Infrared focal plane array detectors specifically designed, modified, or configured for military use; image intensification and other night sighting equipment or systems specifically designed, modified or configured for military use; second generation and above military image intensification tubes (defined below) specifically designed, developed, modified, or configured for military use, and infrared, visible and ultraviolet devices specifically designed, developed, modified, or configured for military application. Military second and third generation image intensification tubes and military infrared focal plane arrays identified in this subparagraph are licensed by the Department of Commerce (ECCN 6A002A and 6A003A)) when part of a commercial system (*i.e.*, those systems originally designed for commercial use). This does not include any military system comprised of non-military specification components. Replacement tubes or focal plane arrays identified in this paragraph being exported for commercial systems are subject to the controls of the ITAR.

* * * * *

Category XIII—Auxiliary Military Equipment

(a) Cameras and specialized processing equipment therefor, photointerpretation, stereoscopic plotting, and photogrammetry equipment which are specifically designed, developed, modified, adapted, or configured for military purposes, and components specifically designed or modified therefor;

(b) Military Information Security Assurance Systems and equipment, cryptographic devices, software, and components specifically designed, developed, modified, adapted, or configured for military applications (including command, control and intelligence applications). This includes: (1) Military cryptographic (including key management) systems, equipment assemblies, modules, integrated circuits, components or software with the capability of maintaining secrecy or confidentiality of information or information systems, including equipment and software for tracking, telemetry and control (TT&C) encryption and decryption;

(2) Military cryptographic (including key management) systems, equipment, assemblies, modules, integrated circuits, components of software which have the capability of generating spreading or hopping codes for spread spectrum systems or equipment;

(3) Military cryptanalytic systems, equipment, assemblies, modules, integrated circuits, components or software;

(4) Military systems, equipment, assemblies, modules, integrated circuits, components or software providing certified or certifiable multi-level security or user isolation exceeding Evaluation Assurance Level (EAL) 5 of the Security Assurance Evaluation Criteria and software to certify such systems, equipment or software;

(5) Ancillary equipment specifically designed, developed, modified, adapted, or configured for the articles in paragraphs (b)(1), (2), (3), and (4) of this category.

(c) Self-contained diving and underwater breathing apparatus as follows:

(1) Closed and semi-closed (rebreathing) apparatus;

(2) Specially designed components and parts for use in the conversion of open-circuit apparatus to military use; and,

(3) Articles exclusively designed for military use with self-contained diving and underwater swimming apparatus.

(d) Carbon/carbon billets and preforms not elsewhere controlled by this subchapter (*e.g.*, Category IV) which are reinforced with continuous unidirectional tows, tapes, or woven cloths in three or more dimensional planes (*e.g.*, 3D, 4D) specifically designed, developed, modified, configured or adapted for defense articles.

(e) Armor (*e.g.*, organic, ceramic, metallic), and reactive armor and components, parts and accessories not elsewhere controlled by this subchapter which have been specifically designed, developed, modified, configured or adapted for a military application.

(f) Structural materials, including carbon/carbon and metal matrix composites, plate, forgings, castings, welding consumables and rolled and extruded shapes that have been specifically designed, developed, configured, modified or adapted for defense articles.

(g) Concealment and deception equipment specifically designed, developed, modified, configured or adapted for military application, including but not limited to special paints, decoys, smoke or obscuration equipment and simulators and components, parts and accessories specifically designed, developed, modified, configured or adapted therefor.

(h) Energy conversion devices for producing electrical energy from nuclear, thermal, or solar energy, or from chemical reaction that are specifically designed, developed, modified, configured or adapted for military application.

(i) Metal embrittling agents.

* (j) Hardware and equipment, which has been specifically designed or modified for military applications, that is associated with the measurement or modification of system signatures for detection of defense articles. This includes but is not limited to signature measurement equipment; reduction techniques and codes; signature materials and treatments; and signature control design methodology.

(k) Tooling and equipment specifically designed or modified for the production of articles controlled by this category.

(l) Technical data (as defined in § 120.10 of this subchapter), and defense services (as defined in § 120.9 of this subchapter) directly related to the defense articles enumerated in paragraphs (a) through (k) of this category. (See also, § 123.20 of this subchapter.) Technical data directly related to the manufacture or production of any defense articles enumerated elsewhere in this category that are designated as Significant Military Equipment (SME) shall itself be designed SME.

(m) The following interpretations explain and amplify terms used in this category and elsewhere in this subchapter:

(1) Paragraph (d) of this category does not control carbon/carbon billets and preforms where reinforcement in the third dimension is limited to interlocking of adjacent layers only, and carbon/carbon 3D, 4D, etc. end items that have not been specifically designed or modified for military applications

(*e.g.*, brakes for commercial aircraft or high speed trains);

(2) Metal embrittlement agents in paragraph (i) of this category are non-lethal weapon substances that alter the crystal structure of metals within a short time span. Metal embrittling agents severely weaken metals by chemically changing their molecular structure. These agents are compounded in various substances to include adhesives, liquids, aerosols, foams and lubricants.

Category XIV—Toxicological Agents, Including Chemical Agents, Biological Agents, and Associated Equipment

* * * * *

* (f) * * *

* * * * *

(4) Individual protection against the chemical and biological agents listed in paragraphs (a) and (b) of this category.

* * * * *

(n) * * *

(4)(i) The individual protection against the chemical and biological agents controlled by this category includes military protective clothing and masks, but not those items designed for domestic preparedness (*e.g.*, civil defense). Domestic preparedness devices for individual protection that integrate components and parts identified in this subparagraph are licensed by the Department of Commerce when such components are:

(A) Integral to the device;

(B) inseparable from the device; and,

(C) incapable of replacement without compromising the effectiveness of the device.

(ii) Components and parts identified in this subparagraph exported for integration into domestic preparedness devices for individual protection are subject to the controls of the ITAR;

(5) Technical data and defense services in paragraph (l) include libraries, databases and algorithms specifically designed or modified for use with articles controlled in paragraph (f) of this category.

(6) The tooling and equipment covered by paragraph (l) of this category includes molds used to produce protective masks, over-boots, and gloves controlled by paragraph (f) and leak detection equipment specifically designed to test filters controlled by paragraph (f) of this category.

(7) The resulting product of the combination of any controlled or non-controlled substance compounded or mixed with any item controlled by this subchapter is also subject to the controls of this category.

* * * * *

Category XVIII—Directed Energy Weapons

* * * * *

(g) * * *

(2) The particle beam systems in paragraph (a)(3) of this category include devices embodying particle beam and electromagnetic pulse technology and associated components and subassemblies (*e.g.*, ion beam current injectors, particle accelerators for neutral or charged particles, beam handling and projection equipment, beam steering, fire control, and pointing equipment, test and diagnostic instruments, and targets) which are specifically designed or modified for directed energy weapon applications.

(3) The articles controlled in this category include any end item, component, accessory, attachment, part, firmware, software or system that has been designed or manufactured using technical data and defense services controlled by this category.

(4) The articles specifically designed or modified for military application controlled in this category include any articles specifically developed, configured, or adapted for military application.

* * * * *

PART 123—LICENSES FOR THE EXPORT OF DEFENSE ARTICLES

■ 3. The authority citation for part 123 continues to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, and 2797); 22 U.S.C. 2753; E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp. p. 79; 22 U.S.C. 2658; Pub. L. 105–261, 112 Stat. 1920.

■ 4. Section 123.27 is amended by revising paragraph (a)(1) to read as follows:

§ 123.27 Special licensing regime for export to U.S. allies of commercial communications satellite components, systems, parts, accessories, attachments and associated technical data.

(a) * * *

(1) The proposed exports or re-exports concern exclusively one or more countries of the North Atlantic Treaty Organization (Belgium, Canada, Czech Republic, Denmark, France, Germany, Greece, Hungary, Iceland, Italy, Luxembourg, The Netherlands, Norway, Poland, Portugal, Spain, Turkey, United Kingdom, and the United States) and/or one or more countries which have been designated in accordance with section 517 of the Foreign Assistance Act of 1961 as a major non-NATO ally (and as defined further in section 644(q) of that Act) for purposes of that Act and the Arms Export Control Act (Argentina, Australia, Bahrain, Egypt, Israel, Japan, Jordan, Kuwait, New Zealand, the Philippines, Thailand, and the Republic of Korea).

* * * * *

Dated: March 17, 2004.

John R. Bolton,

Under Secretary, Arms Control and International Security, Department of State.

[FR Doc. 04–11415 Filed 5–20–04; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

RIN 0720–AA76

TRICARE Program; Inclusion of Anesthesiologist Assistants as Authorized Providers; Coverage of Cardiac Rehabilitation in Freestanding Cardiac Rehabilitation Facilities

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule establishes a new category of provider as an authorized TRICARE provider and it increases the settings where cardiac rehabilitation can be covered as a TRICARE benefit. It recognizes anesthesiologist assistants (AAs) as authorized providers under certain circumstances. It also authorizes cardiac rehabilitation services, which are already a covered TRICARE benefit when provided by hospitals, to be provided in freestanding cardiac rehabilitation facilities.

DATES: This rule is effective May 21, 2004. Comments on the addition of § 199.6 (c)(3)(iii)(J) will be accepted until June 21, 2004. The chart below identifies start Healthcare Delivery dates of this rule in various areas.

T–NEX region/contractor	States	Start healthcare delivery
North (Health Net Federal Services, Inc.).	Illinois, Indiana, Kentucky, Michigan, Ohio, Wisconsin, West Virginia, Virginia (except the Northern Virginia/National Capital Area), North Carolina, Eastern Iowa, Rock Island, IL, Fort Campbell catchment area of Tennessee.	July 1, 2004.
	Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Northern Virginia, West Virginia (portion).	September 1, 2004.
South (Humana Military Healthcare Services).	Oklahoma, Arkansas and major portions of Texas and Louisiana	November 1, 2004.
	Alabama, Florida, Georgia, Mississippi, Eastern Louisiana, South Carolina, Tennessee, small area of Arkansas, New Orleans area.	August 1, 2004.
West (TriWest Healthcare Alliance Corp.).	Washington, Oregon, Northern Idaho	June 1, 2004.
	California, Hawaii, Alaska	July 1, 2004.
	Arizona, Colorado, Idaho, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, South Dakota, western portion of Texas, Wyoming.	October 1, 2004.

ADDRESSES: TRICARE Management Activity (TMA), Medical Benefits and Reimbursement Systems, 16401 East Centretech Parkway, Aurora, CO 80011–9043.

FOR FURTHER INFORMATION CONTACT: Stan Regensberg, Medical Benefits and Reimbursement Systems, TMA, (303) 676–3742.

SUPPLEMENTARY INFORMATION:

I. Summary of Final Rule Provisions

A. Inclusion of Anesthesiologist Assistants as Authorized Providers

At present only two types of anesthesia providers may provide services to TRICARE beneficiaries—anesthesiologists and certified registered nurse anesthetists (CRNAs). In some areas of the country, anesthesiologist assistants, after completing the specified training, being accredited, and, where required, being licensed by the state also provide anesthesia services. The Centers for Medicare and Medicaid Services (CMS) already recognizes anesthesiologist assistants as authorized providers (42 CFR 410.69). This final rule establishes anesthesiologist assistants as authorized providers under the same conditions applied by CMS.

The reader should refer to the proposed rule that was published on April 3, 2003, (68 FR 16247) for detailed information regarding this action.

B. Coverage of Cardiac Rehabilitation in Freestanding Cardiac Rehabilitation Centers

Currently TRICARE provides coverage/payment for inpatient or outpatient services and/or supplies provided in connection with a cardiac rehabilitation program when provided by a TRICARE authorized hospital. Since hospital based cardiac rehabilitation is already an established benefit under TRICARE, this final rule simply applies that benefit and reimbursement structure to freestanding cardiac rehabilitation programs.

The reader should refer to the proposed rule that was published on April 3, 2003, (68 FR 16247) for detailed information regarding this benefit and reimbursement for it.

C. Clarification Regarding the Status of Certified Registered Nurse Anesthetists

TRICARE is issuing a provision for certified registered nurse anesthetists (CRNAs). It provides a separate designation for CRNAs by clarifying their existing status in the TRICARE program as an independent provider operating under their state licensure and meeting the requirements for a certified registered nurse anesthetist.

II. Public Comments

We received no comments regarding the coverage of cardiac rehabilitation services in freestanding cardiac rehabilitation facilities.

We received a large number of comments, both in support of and opposed to, our proposal to authorize AAs as TRICARE providers. The comments were from individuals as well as national organizations representing groups of providers. The following comments were in support of our proposal.

Comment: A number of anesthesiologists commented that they employ AAs and are very satisfied with their services.

Comment: A number of commenters noted that AAs are recognized by many commercial insurances and managed care plans.

Comment: Many commenters, both individuals and national provider organizations, described the extensive training that AAs receive. They noted that the training lasts for 24–27 months and includes master's level coursework after a bachelor's degree that must include pre-medical courses such as biology, chemistry, physics, and calculus. The training also includes 2,500 hours of direct patient contact of clinical rotations in every area of anesthesia (*i.e.*, trauma, cardiac, thoracic, obstetrical, pediatric, etc.). They also noted that the AA training programs are nationally accredited by the Commission on Accreditation of Allied Health Education Programs (CAAHEP) which accredits training programs for 2,100 other allied health educational programs at 1,300 institutions. Presently, there are two AA training programs (Case Western Medical School and Emory University Medical School) with another to begin shortly (South University Medical School). Graduates of the programs must pass a national certification examination administered by the National Board of Medical Examiners for the National Commission for Certification of Anesthesiologist Assistants. This examination is administered the first Saturday in June and has a six hour duration. The exam may occur prior to graduation; however, all course work and instruction has been completed by the date of the exam. Additional clinical experience finishes out the time from exam to graduation. Upon graduation, the AA will be told whether he or she has passed the exam. The AA can not practice without official notification that he or she has passed the exam.

Comment: Many commenters noted that in order to practice their profession, AAs must pass a national certification examination administered by the National Board of Medical Examiners for the National Commission for Certification of Anesthesiologist Assistants. In addition, AAs must have 40 hours of continuing medical education every two years and complete a recertification every six years.

As stated above, we also received a number of comments that were opposed to our proposal to authorize AAs as TRICARE providers. Since these comments disagree with our final decision, we provide a response to each comment to explain why we have elected to authorize AAs as TRICARE providers.

Comment: A number of commenters stated that only five states license AAs and questioned why TRICARE should recognize AAs "if most of the country does not recognize the AA practice".

Response: As stated in the proposed rule, we will require that AAs comply with all applicable requirements of state law and be licensed, where applicable, by the state in which they practice. As described in § 199.6(c)(2) of this part describing conditions of authorization for individual providers, in jurisdictions that do not license a specific category of individual professional, certification by a Qualified Accreditation Organization is required. As described in § 199.6(c)(3) of this part, in jurisdictions that do not provide for licensure or certification, the provider must be certified by or eligible for full clinical membership in the appropriate national professional association that sets standards for the specific profession. The fact that AAs are required to be licensed in six states and not all is not pertinent. Many other states recognize them, but do not require them to be licensed and we believe that their qualifications justify TRICARE recognition.

Comment: A national provider organization noted that AAs have been recognized by Medicare since 1983, and that CMS considers AAs and CRNAs to be equivalent providers and uses the term "anesthetist" for both professions.

Response: However, TRICARE recognizes the increased training required by certified registered nurse anesthetists compared to AAs, and as a result, authorizes CRNAs to practice independent of physician supervision in those states where the licensure permits. TRICARE is publishing a provision in this rule to clarify CRNAs' authority to practice independently.

Comment: Many commenters stated that AAs may not be the solution to correct the current national anesthesia provider shortage, since they must be supervised by an anesthesiologist.

Response: We did not propose authorizing AAs in order to alleviate any provider shortage or to solve any other problem. Our proposal was based on the fact that they are certified by a nationally recognized organization, are a recognized provider in many states and by many third-party payers, are licensed by several states, and are authorized under Medicare.

Comment: One national provider organization questioned if recognizing AAs will increase TRICARE costs.

Response: It will not. As we stated in the proposed rule, payment for anesthesia services provided by an anesthesiologist and an AA under the anesthesiologist's direct supervision will never exceed what would have been paid if the services were provided only by the anesthesiologist.

Comment: A number of commenters noted that the military system requires healthcare providers who can be mobilized at a moment's notice to provide quick response in military conflicts. It is not effective to deploy AAs who would have to be accompanied by an anesthesiologist.

Response: We want to stress that this final rule affects only services provided in civilian facilities and is wholly separate from services provided within the military's direct care system. AAs will not practice in MTFs; they will not be commissioned, nor will they deploy to support our troops.

Comment: Many commenters suggested that TRICARE should conduct a study on the safety record and cost effectiveness of AAs before recognizing them.

Response: We believe the issue of cost effectiveness is moot, as explained above. With regard to a study of the safety record of AAs, we don't believe this is necessary for several reasons. First, CMS has recognized AAs for 20 years and there have been no issues of safety. Second, a national provider organization stated that the professional liability insurance rates charged to AAs and nurse anesthetists are the same, and there is no evidence to indicate there is any difference between AAs and nurse anesthetists with respect to claims filed. Perhaps most importantly, two national organizations representing physicians have strongly endorsed our proposal, and the physician is ultimately the person most responsible for patient safety. Third, AAs will not be recognized as individual professional providers with the ability to bill independently, but rather as extenders of the anesthesiologist who is responsible for direct supervision of the AA or AAs.

Comment: One commenter noted that when CMS proposed allowing CRNAs to practice without physician supervision in 1997 this was opposed, and the final rule called for a patient safety study to be conducted. The commenter believes AAs should be included in this study.

Response: As stated above, we do not believe a study of the safety of AAs is necessary. In addition, a study of whether an allied health professional can safely practice without physician supervision is an entirely different issue from what we have proposed, since we will require AAs to be under the direct supervision of a physician. TRICARE defines direct supervision of an AA by an anesthesiologist as follows: The anesthesiologist performs a pre-anesthetic examination and evaluation; the anesthesiologist prescribes the anesthesia plan; the anesthesiologist personally participates in the most demanding aspects of the anesthesia plan including, if applicable, induction and emergence; the anesthesiologist ensures that any procedures in the anesthesia plan that he or she does not perform are performed by a qualified AA; the anesthesiologist monitors the course of anesthesia administration at frequent intervals; the anesthesiologist remains physically present and available for immediate personal diagnosis and treatment of emergencies; the anesthesiologist provides indicated post-anesthesia care; the anesthesiologist performs no other services while he or she supervises no more than four anesthesiologist assistants concurrently or a lesser number if so limited by the state in which the procedure is performed. The Director, TMA, or a designee, shall issue TRICARE policies, instructions, procedures, guidelines, standards, and criteria as may be necessary to implement the intent of this section. TRICARE has modeled its definition of direct supervision on the current Medicare definition of "medically directed anesthesia services," with three notable variations. First, Medicare uses the terminology "medically directed anesthesia services;" whereas, TRICARE uses "direct supervision." For purposes of definition, such terminology is interchangeable. Second, Medicare refers to a qualified individual who performs anesthesia procedures not rendered by a physician as defined in Medicare operating instructions. For TRICARE, a qualified individual who performs anesthesia procedures under 32 CFR 199.6(l), established by this final rule, is an AA. The final difference pertains to the number of AAs an anesthesiologist may concurrently supervise. TRICARE and MEDICARE both require that "the anesthesiologist performs no other services while he or she supervises no more than four anesthesiologist assistants concurrently" however TRICARE includes additional language to indicate that in cases where state law further restricts the number of AAs an

Anesthesiologist can concurrently supervise TRICARE will defer to state law. The relevant phrase states "or a lesser number if so limited by the state in which the procedure is performed."

Comment: One commenter noted that our proposed rule stated that AAs will be authorized under the same conditions applied by CMS and questioned if that means that all CMS rules relating to anesthesia apply to AAs or just some. Also, will the CMS medical direction rules apply, and what does direct supervision mean?

Response: We intend to apply all the CMS rules to AAs who provide services to TRICARE beneficiaries. However, we are adding one additional condition regarding the medical direction of AAs. CMS allows physicians to provide concurrent medical direction of up to four AAs or CRNAs. We will use that standard in general, but we will also require that if a state has a more stringent requirement, the state's requirement must be followed. Direct supervision means the same as medical direction under CMS, and we have expanded the regulatory section to include those requirements.

Comment: One commenter asked if AAs must be licensed or can they practice under a form of delegated medicine?

Response: As stated in the proposed rule, AAs must comply with all applicable requirements of state law and be licensed, where applicable. Therefore, they must be licensed only where a state requires them to be licensed. In other states, they may practice as unlicensed providers under the delegated authority of a physician as permitted by state law.

Comment: One commenter noted that the proposed rule states that an AA program must build on a premedical undergraduate science background but stated that neither currently existing AA educational program requires a premedical major. The commenter asked if this means the programs will have to change their requirements.

Response: The AA programs will not have to change their requirements. The proposed rule and the final rule require only that the AA program must build on a premedical science background. It does not require that the participant have a premedical science major. It is important to note that both programs require extensive undergraduate science coursework. In addition, the accreditation standard for AA programs as required by the Commission on Accreditation of Allied Health Education Programs requires undergraduate coursework that includes "studies in biology, chemistry, mathematics, and physics which are usually required for graduate study or its equivalent in the basic medical sciences."

III. Changes in the Final Rule

We have made no changes to the provisions on coverage of cardiac rehabilitation in freestanding cardiac rehabilitation centers. However, based on comments we received on the proposed rule, we have made several changes to the final rule language regarding the inclusion of anesthesiologist assistants as authorized providers.

The profession's name is singular and not singular possessive as we used it in the proposed rule. Accordingly, the final rule uses "anesthesiologist assistant".

It was suggested that we delete the term "Master's level medical school-based" in describing the required AA programs in order to reflect changes in CAAHEP accreditation standards that permit a shared program between a medical school and a university program outside the medical school. We reviewed the accreditation standards and, based on that, we have changed the wording to require that the program be established under the auspices of a medical school rather than be "medical school-based". However, we are retaining the language regarding Master's level for clarity.

It was also suggested that when we refer to the Committee on Allied Health Education and Accreditation we include the words "or its successor organization". We have done this in the final rule.

As stated in our response to the public comments, we have added language to the regulatory provisions to ensure clarity of what is required for direct supervision.

Lastly, we have within this final rule included a provision to provide a separate designation for certified registered nurse anesthetists (CRNAs) by clarifying their existing status in the TRICARE program as an independent provider operating under their state licensure and meeting the requirements for a certified registered nurse anesthetist.

IV. Regulatory Procedures

Executive Order (EO) 12866 requires that a comprehensive regulatory impact analysis be performed on any economically significant regulatory action, defined as one which would result in an annual effect of $100 million or more on the national economy or which would have other substantial impacts.

The Regulatory Flexibility Act (RFA) requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities.

This is not a significant regulatory action under EO 12866 and has been reviewed by the Office of Management and Budget. In addition, we certify that this final rule will not significantly affect a substantial number of small entities.

Paperwork Reduction Act

This rule imposes no burden as defined by the Paperwork Reduction Act of 1995.

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health Insurance, Military personnel.

■ Accordingly, 32 CFR part 199 is amended as follows:

PART 199—[AMENDED]

■ 1. The authority citation for Part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. Chapter 55.

■ 2. Section 199.4 is amended by revising paragraph (e)(18)(iv) to read as follows.

§ 199.4 Basic program benefits.

* * * * *

(e) * * *

(18) * * *

(iv) *Providers.* A provider of cardiac rehabilitation services must be a TRICARE authorized hospital (see § 199.6 (b)(4)(i)) or a freestanding cardiac rehabilitation facility that meets the requirements of § 199.6 (f). All cardiac rehabilitation services must be ordered by a physician.

* * * * *

■ 3. Section 199.6 is amended by redesignating paragraph (c)(3)(iii)(I) as paragraph (c)(3)(iii)(K) and adding new paragraphs (c)(3)(iii)(I) and (c)(3)(iii)(J)) to read as follows:

§ 199.6 Authorized providers.

* * * * *

(c) * * *

(3) * * *

(iii) * * *

(I) *Anesthesiologist Assistant.* An anesthesiologist assistant may provide covered anesthesia services, if the anesthesiologist assistant:

(*1*) Works under the direct supervision of an anesthesiologist who bills for the services and for each patient;

(*i*) The anesthesiologist performs a pre-anesthetic examination and evaluation;

(*ii*) The anesthesiologist prescribes the anesthesia plan;

(*iii*) The anesthesiologist personally participates in the most demanding aspects of the anesthesia plan including, if applicable, induction and emergence;

(*iv*) The anesthesiologist ensures that any procedures in the anesthesia plan that he or she does not perform are performed by a qualified anesthesiologist assistant;

(*v*) The anesthesiologist monitors the course of anesthesia administration at frequent intervals;

(*vi*) The anesthesiologist remains physically present and available for immediate personal diagnosis and treatment of emergencies;

(*vii*) The anesthesiologist provides indicated post-anesthesia care; and

(*viii*) The anesthesiologist performs no other services while he or she supervises no more than four anesthesiologist assistants concurrently or a lesser number if so limited by the state in which the procedure is performed.

(*2*) Is in compliance with all applicable requirements of state law, including any licensure requirements the state imposes on nonphysician anesthetists; and

(*3*) Is a graduate of a Master's level anesthesiologist assistant educational program that is established under the auspices of an accredited medical school and that:

(*i*) Is accredited by the Committee on Allied Health Education and Accreditation, or its successor organization; and

(*ii*) Includes approximately two years of specialized basic science and clinical education in anesthesia at a level that builds on a premedical undergraduate science background.

(*4*) The Director, TMA, or a designee, shall issue TRICARE policies, instructions, procedures, guidelines, standards, and criteria as may be necessary to implement the intent of this section.

(J) *Certified Registered Nurse Anesthetist (CRNA).* A certified registered nurse anesthetist may provide covered care independent of physician referral and supervision as specified by state licensure. For purposes of CHAMPUS, a certified registered nurse anesthetist is an individual who:

(*1*) Is a licensed, registered nurse; and

(*2*) Is certified by the Council on Certification of Nurse Anesthetists, or its successor organization.

* * * * *

Dated: May 17, 2004.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 04–11464 Filed 5–20–04; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 100 and 165

[USCG–2004–17638]

Quarterly Listings; Safety Zones, Security Zones, and Special Local Regulations

AGENCY: Coast Guard, DHS.

ACTION: Correcting amendments.

SUMMARY: The Coast Guard published a document in the **Federal Register** on May 4, 2004 (69 FR 24513), providing required notice of substantive rules issued by the Coast Guard and temporarily effective between January 1, 2004 and March 31, 2004. The document incorrectly used docket number USCG–2004–17636. This document revises the docket number.

DATES: This correction is effective May 17, 2004.

FOR FURTHER INFORMATION CONTACT: For questions on this notice contact LT Jeff Bray, Office of Regulations and Administrative Law, telephone (202) 267–2830.

SUPPLEMENTARY INFORMATION: In FR Doc. 04–9955 appearing on page 24513 in the **Federal Register** of Tuesday, May 4, 2004, make the following correction:

■ 1. On page 24513, in the first column, the notice's docket number is revised to read as follows: [USCG–2004–17638].

Dated: May 17, 2004.

S. G. Venckus,

Chief, Office of Regulations and Administrative Law.

[FR Doc. 04–11571 Filed 5–20–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD13–04–020]

RIN 1625–AA00

Safety Zones: Fireworks Displays in the Captain of the Port, Portland Zone

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing safety zones on the waters of the Columbia River and the Willamette River, during fireworks displays. The Captain of the Port, Portland, Oregon, is taking this action to safeguard watercraft and their occupants from safety hazards associated with these displays. Entry into these safety zones is prohibited unless authorized by the Captain of the Port.

DATES: This regulation is effective from 9:45 p.m. on July 10, 2004, until 9:45 p.m. on September 2, 2004.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are available for inspection or copying at the U.S. Coast Guard MSO/Group Portland, 6767 N. Basin Ave., Portland, Oregon 97217 between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Ryan Wagner, c/o Captain of the Port, Portland 6767 N. Basin Avenue, Portland, Oregon 97217, (503) 240–2584.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) and 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for not publishing an NPRM and for making this rule effective less than 30 days after publication in the **Federal Register.** Publishing a NPRM and incorporating these events into 33 CFR 165.13–1315 would be contrary to public interest since the dates for these three events will not always fall on the same day in future years. In addition, immediate action is necessary to ensure the safety of vessels and spectators gathering in the vicinity of the various fireworks launching barges and displays.

Background and Purpose

The Coast Guard is establishing temporary safety zones to allow for safe fireworks displays. All events occur within the Captain of the Port's, Portland, OR, Area of Responsibility (AOR). These events may result in a number of vessels congregating near fireworks launching barges and sites. The safety zones are needed to protect watercraft and their occupants from safety hazards associated with fireworks displays. These safety zones will be enforced by representatives of the Captain of the Port, Portland, Oregon.

The Captain of the Port may be assisted by other Federal and local agencies.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 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 this rule under that Order. This rule is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). This expectation is based on the fact that the regulated areas established by the regulation will encompass small portions of rivers in the Portland AOR on different dates, all in the evening when vessel traffic is low.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" includes small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit a portion of the Willamette River during the times mentioned under *Background and Purpose*. These safety zones will not have significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for only 1 hour during three evenings when vessel traffic is low. Traffic will be allowed to pass through the zone with the permission of the Captain of the Port or his designated representatives on scene, if safe to do so. Because the impacts of this rule are expected to be so minimal, the Coast Guard certifies under 5 U.S.C. 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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

We have analyzed this rule under Executive Order 13132 and have determined that this final rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

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

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of 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 concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian tribal governments, because it 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.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(g) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A Categorical Exclusion is provided for temporary safety zones of less than one week in duration.

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. Temporarily add section 165.T13–002 to read as follows:

§ 165.T13–002 Safety Zones for fireworks events in the Captain of the Port Portland Zone.

(a) *Safety Zones.* The following areas are designated safety zones:

(1) *Rainier Days Fireworks Celebration, Rainier, OR*

(i) *Location.* All water of the Columbia River enclosed by the following points: 46°06′04″ N, 122°56′35″ W following the shoreline to 46°05′53″ N 122°55′58″ W then south to 46°05′24″ N 122°55′58″ W following the shoreline to 46°05′38″ N 122°56′35″ W then back to the point of origin.

(ii) *Enforcement period.* 9:45 p.m. (P.d.t.) to 10:45 p.m. (P.d.t.) on July 10, 2004.

(2) *Astoria Regatta Fireworks Show, Astoria, OR*

(i) *Location.* All water of the Columbia River enclosed by the following points: 46°11′51″ N 123°49′46″ W east to 46°11′52″ N 123°49′03″ W south to 46°11′27″ N 123°49′03″ W following the shoreline to 46°11′26″ N 123°49′46″ W then back to the point of origin.

(ii) *Enforcement period.* 9:45 p.m. (P.d.t.) to 10:45 p.m. (P.d.t.) on August 14, 2004.

(3) *Oregon Symphony Concert Fireworks Display, Portland, OR*

(i) *Location.* All waters of the Willamette River bounded by the Hawthorne Bridge to the north, Marquam Bridge to the south, and shoreline to the east and west.

(ii) *Enforcement period.* 8:45 p.m. (P.d.t.) to 9:45 p.m. on September 2, 2004.

(b) *Regulations.* In accordance with the general regulations in Section 165.23 of this part, no person or vessel may enter or remain in this zone unless authorized by the Captain of the Port or his designated representatives.

Dated: April 27, 2004.

Paul D. Jewell,

Captain, U.S. Coast Guard, Captain of the Port.

[FR Doc. 04–11392 Filed 5–20–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP San Juan–04–044]

RIN 1625–AA00

Security Zone; St. Croix, United States Virgin Islands

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule; request for comments.

SUMMARY: The Coast Guard is establishing a temporary security zone in the vicinity of the HOVENSA refinery facility on St. Croix, U.S. Virgin Islands encompassing the waters of Limetree Bay and Limetree Bay Channel. This security zone is needed for national security reasons to protect the public and the HOVENSA facility from potential subversive acts. All vessels must receive permission from the U.S. Coast Guard Captain of the Port San Juan prior to entering this temporary security zone.

DATES: This rule is effective from April 16, 2004, until October 16, 2004.

ADDRESSES: You may mail comments and related material to Marine Safety Office San Juan, 5 Calle La Puntilla, San Juan, PR 00901. Marine Safety Office San Juan maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the Marine Safety Office between 7 a.m. and 3:30 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Kevin Reed, Marine Safety Office San Juan, Puerto Rico at (787) 289–0739.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. Publishing a NPRM and delaying the rule's effective date would be contrary to the public interest since immediate action is needed to protect the public, ports and waterways of the United States.

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**. Similar temporary security zones have been established over the past few years and published in the **Federal Register**: 67 FR 2332, January 17, 2002; 67 FR 57952, September 13, 2002; 67 FR 22296, April 28, 2003; 67 FR 41081, July 10, 2003; and 69 FR 6150, February 10, 2004. However, the last in this series of temporary final rules expired April 15, 2004. We did not receive any comments on these past temporary final rules.

The Captain of the Port San Juan has determined that due to the continued risk and recent increases in maritime security concerns, there is the need to continue to have this regulation in place. The Coast Guard intends to publish a notice of proposed rulemaking to create a permanent security zone.

Request for Comments

Although the Coast Guard has good cause to implement this regulation without a notice of proposed rulemaking, we want to afford the public the opportunity to participate in this rulemaking by submitting comments and related material regarding the size and boundaries of these security zones in order to minimize unnecessary burdens. If you do so, please include your name and address, identify the docket number for this rulemaking (COTP San Juan–04–044), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this temporary final rule in view of them.

Background and Purpose

Based on the September 11, 2001, terrorist attacks and recent increases in maritime security concerns, there is an increased risk that subversive activity could be launched by vessels or persons in close proximity to the HOVENSA refinery on St. Croix, USVI against tank vessels and the waterfront facility. Given the highly volatile nature of the substances stored at the HOVENSA facility, this security zone is necessary to decrease the risk that subversive activity could be launched against the HOVENSA facility. The Captain of the Port San Juan is reducing this risk by prohibiting all vessels without a scheduled arrival from coming within 3 miles of the HOVENSA facility unless specifically permitted by the Captain of the Port San Juan, or that officer's designated representative. The Captain of the Port San Juan can be reached on VHF Marine Band Radio, Channel 16 (156.8 Mhz) or by calling (787) 289–2040, 24 hours a day, 7 days a week. The HOVENSA Facility Port Captain can be reached on VHF Marine Band Radio channel 11 (156.6 Mhz) or by calling (340) 692–3488, 24 hours a day, seven days a week.

The temporary security zone is defined by a triangular area that extends 3 miles seaward from the HOVENSA facility and encompasses the waters of Limetree Bay and Limetree Channel, as outlined by the following coordinates: 17°41′32″N, 64°45′09″W; thence to 17°41′44″N, 64°44′39″W; thence to 17°38′30″N, 64°43′12″W; thence returning to the beginning point at 17°41′39″N, 64°45′09″W. The security zone does not include the waters of the Cross Channel and Krause Lagoon Channel.

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 this zone covers an area that is not typically used by commercial vessel traffic, including fishermen, and vessels may be allowed to enter the zone on a case-by-case basis with the permission of the Captain of the Port San Juan.

Small Entities

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

This rule may affect the following entities, some of which may be small entities: owners of small charter fishing or diving operations that operate near the HOVENSA facility. 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 this zone covers an area that is not typically used by commercial fishermen and vessels may be allowed to enter the zone on a case by case basis with the permission of the Captain of the Port San Juan.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

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 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 would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of 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 would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

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. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD, 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. An "Environmental Analysis Check List" and a "Categorical Exclusion Determination" (CED) are available in the docket where indicated under **ADDRESSES.**

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. From April 16, 2004, until October 16, 2004, add § 165.T07–101 to read as follows:

§ 165.T07–101 Security Zone; HOVENSA Refinery, St. Croix, U.S. Virgin Islands.

(a) *Location.* The following area is a security zone: All waters from surface to bottom encompassed by a line connecting the following coordinates based on the NAD 83: The point at 17°41′32″ North, 64°45′09″ West; thence to 17°41′44″ North, 64°44′39″ West; thence to 17°38′30″ North, 64°43′12″ West; thence returning to the beginning point at 17°41′32″ North, 64°45′09″ West.

(b) *Regulations.* Under § 165.33, with the exception of vessels with scheduled arrivals to the HOVENSA Facility, no vessel may enter the regulated area unless specifically authorized by the Captain of the Port San Juan (COTP) or a Coast Guard commissioned, warrant, or petty officer designated by the Captain of the Port. The Captain of the Port will notify the public of any changes in the status of this zone by Marine Safety Radio Broadcast on VHF Marine Band Radio, Channel 16 (156.8 Mhz). The Captain of the Port San Juan can be reached on VHF Marine Band Radio, Channel 16 (156.8 Mhz) or by calling (787) 289–2040, 24 hours a day, 7 days a week. The HOVENSA Facility Port Captain can be reached on VHF Marine Band Radio channel 11 (156.6 Mhz) or by calling (340) 692–3488, 24 hours a day, 7 days a week.

Dated: April 16, 2004.

William J. Uberti,

Captain, U.S. Coast Guard, Captain of the Port, San Juan.

[FR Doc. 04–11587 Filed 5–20–04; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. NJ68–275, FRL–7661–1]

Approval and Promulgation of Implementation Plans; New Jersey; Motor Vehicle Enhanced Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a request from New Jersey to revise its State Implementation Plan (SIP) to incorporate revisions to the enhanced inspection and maintenance (I/M) program. New Jersey has made several amendments to its I/M rules to comply with EPA regulations and to improve performance of the program and has requested that the SIP be revised to include these changes. Chief among the amendments EPA is approving is New Jersey's On-Board Diagnostic (OBD) program. EPA is approving New Jersey's latest I/M rule changes. The intended effect of this action is to maintain consistency between the State-adopted rules and the federally approved SIP.

DATES: *Effective Date:* This rule will be effective June 21, 2004.

ADDRESSES: Copies of the state submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866.

Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, SW., Washington, DC 20460.

New Jersey Department of Environmental Protection, Bureau of Air Quality Planning, 401 East State Street, CN027, Trenton, New Jersey 08625.

FOR FURTHER INFORMATION CONTACT: Reema Persaud, Air Programs Branch, 290 Broadway, 25th Floor, New York, NY 10007–1866, (212) 637–4249, *persaud.reema@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On December 15, 2003 (68 FR 69637), EPA published a notice of proposed rulemaking regarding a State Implementation Plan (SIP) revision submitted by the State of New Jersey. The notice proposed to approve a revision to the SIP for New Jersey's enhanced inspection and maintenance (I/M) program. New Jersey made several amendments to its I/M rules to comply with EPA regulations and to improve performance of the program and requested that the SIP be revised to include these changes. Chief among the amendments EPA proposed to approve is New Jersey's On-Board Diagnostic (OBD) program. A detailed description of New Jersey's submittals and EPA's rationale for the proposed action were presented in the December 15, 2003 proposal, referenced above, and will not be restated here.

II. Public Comments on the Proposed Action

No comments were received for the proposed rulemaking published in the December 15, 2003 **Federal Register**.

III. Final Action

EPA is taking final action to approve New Jersey's OBD I/M program and additional changes to the I/M SIP discussed in the Notice of Proposed Rulemaking titled "Approval and Promulgation of Implementation Plans; New Jersey; Motor Vehicle Enhanced Inspection and Maintenance Program." EPA is approving the request for the exemption of OBD-eligible gasoline-fueled and bi-fueled school buses from enhanced I/M inspection, and for leasing companies and out-of-state dealerships to be allowed to issue temporary inspection decals. The SIP revision also incorporated several features of the current New Jersey Enhanced Inspection and Maintenance program, such as, the increase of the minimum cost expenditure value for the issuance of a waiver from $200 to $450; the exemption from dynamometer testing any motor vehicle "with a chassis height that has been modified so as to make its operation on a dynamometer either impractical or hazardous"; and the removal of all references to the evaporative pressure and purge test, while retaining the evaporative fuel cap leak test; and additional amendments to clarify definitions and other aspects of the program. The State demonstrated there is no adverse impact to air quality with the exemption of new cars from inspection for four years, as opposed to two years, and the change in the minimum cost expenditure value for the issuance of a waiver, from $200 to $450. Please refer to the proposed rulemaking 68 FR 69637 for further details on all approved measures. EPA's authority to approve New Jersey's enhanced I/M program is set forth at sections 110 and 182 of the Clean Air Act.

IV. Administrative Requirements

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 20, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: April 29, 2004.

Jane M. Kenny,

Regional Administrator, Region 2.

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

PART 52—[AMENDED]

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

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

Subpart FF—New Jersey

■ 2. Section 52.1570 is amended by adding new paragraph (c)(76) to read as follows:

§ 52.1570 Identification of plan.

* * * * *

(c) * * *

* * * * *

(76) Revisions to the New Jersey State Implementation Plan (SIP) concerning the Enhanced Inspection and Maintenance Program, submitted on August 13, 2003 by the New Jersey Department of Environmental Protection (NJDEP).

(i) Incorporation by reference:

(A) Title 13, Chapter 20 of the NJAC: Subchapter 7, "Vehicle Inspections" (Section: 7.1); Subchapter 26, "Compliance With Diesel Emission Standards and Equipment, Periodic Inspection Program for Diesel Emissions, and Self-Inspection of Certain Classes of Motor Vehicles" (Sections: 26.2, 26.16); Subchapter 28, "Inspection of New Motor Vehicles" (Section 28.3); Subchapter 29, "Mobile Inspection Unit" (Section: 29.2); Subchapter 32, "Inspection Standards and Test Procedures To Be Used By Official Inspection Facilities"; Subchapter 33, "Inspection Standards and Test Procedures To Be Used By Licensed Private Inspection Facilities"; Subchapter 43, "Enhanced Motor Vehicle Inspection and Maintenance Program"; Subchapter 44, "Private Inspection Facility Licensing"; and Subchapter 45, "Motor Vehicle Emission Repair Facility Registration," effective May 19, 2003.

(ii) Additional material:

(A) Letter from State of New Jersey Department of Environmental Protection dated August 13, 2003, requesting EPA approval of a revision to the Enhanced Inspection and Maintenance Program SIP which contains amendments to the Subchapter 16 "Control and Prohibition of Air Pollution from Volatile Organic Compounds."

■ 3. Section 52.1605 is amended by revising the entries under Title 13, Chapter 20 for Subchapters 7, 26, 28, 29, 32, 33, 43, 44, and 45 in the table in numerical order to read as follows:

§ 52.1605 EPA-approved New Jersey regulations.

State regulation	State effective date	EPA approved date	Comments
* * * * *	*	* *	
Title 13, Chapter 20 Subchapter 7, "Vehicle Inspection."	May 19, 2003	May 21, 2004 [Insert FR page citation].	
Sections: 7.1, 7.2, 7.3, 7.4, 7.5, 7.6.			
* * * * *	*	* *	
Subchapter 26, "Compliance With Diesel Emission Standards and Equipment, Periodic Inspection Program for Diesel Emissions, and Self-Inspection of Certain Classes of Motor Vehicles.".	May 19, 2003	May 21, 2004 [Insert FR page citation].	
Section: 26.2, 26.16.			
Subchapter 28, "Inspection of New Motor Vehicles."	May 19, 2003	May 21, 2004 [Insert FR page citation].	
Sections: 28.3, 28.4, 28.6.			
Subchapter 29, "Mobile Inspection Unit."	May 19, 2003	May 21, 2004 [Insert FR page citation].	
Sections: 29.1, 29.2, 29.3.			
Subchapter 32, "Inspection Standards and Test Procedures To Be Used By Official Inspection Facilities.".	May 19, 2003	May 21, 2004 [Insert FR page citation].	
Subchapter 33, "Inspection Standards and Test Procedures To Be Used By Licensed Private Inspection Facilities.".	May 19, 2003	May 21, 2004 [Insert FR page citation].	
Subchapter 43, "Enhanced Motor Vehicle Inspection and Maintenance Program."	May 19, 2003	May 21, 2004 [Insert FR page citation].	
Subchapter 44, "Private Inspection Facility Licensing."	May 19, 2003	May 21, 2004 [Insert FR page citation].	
Subchapter 45, "Motor Vehicle Emission Repair Facility Registration."	May 19, 2003	May 21, 2004 [Insert FR page citation].	
* * * * *	*	* *	

[FR Doc. 04–11433 Filed 5–20–04; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD168–3110; FRL–7665–6]

Finding of Failure To Submit Required State Implementation Plan Revision for the Metropolitan Washington, DC Ozone Nonattainment Area; Maryland

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is taking final action making a finding, under the Clean Air Act (CAA or Act), that the State of Maryland has failed to submit an ozone nonattainment state implementation plan (SIP) revision required by the new classification for the area under EPA's final rule that reclassified the Metropolitan Washington, DC ozone nonattainment area to severe nonattainment. EPA is issuing a finding that the State of Maryland failed to submit a SIP revision that provides for the implementation of penalty fees upon major stationary sources of volatile organic compound and nitrogen oxide emissions in the Metropolitan Washington, DC severe ozone nonattainment area if the area fails to attain the one-hour ozone national ambient air quality standard. This action triggers the 18-month time clock for mandatory application of sanctions in Maryland and the 24-month time frame for EPA to promulgate a Federal implementation plan under the Act.

DATES: *Effective Date:* This final rule is effective on June 21, 2004.

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

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

SUPPLEMENTARY INFORMATION:

I. Background

A. When Did EPA Reclassify the Metropolitan Washington, DC Ozone Nonattainment Area and What Was the Deadline for Submission?

On January 24, 2003 (68 FR 3410), EPA promulgated a final rule reclassifying the Metropolitan Washington, DC ozone nonattainment area from serious to severe nonattainment for the 1-hour ozone national ambient air quality standard (NAAQS). This final rule established a deadline of March 1, 2004, by which the District, Maryland and Virginia were required to submit state implementation plan (SIP) revisions to their respective SIP to meet the additional requirements of severe ozone nonattainment areas found in section 182(d) of the CAA. These additional requirements were discussed in the notice of proposed rulemaking and the final rulemaking for the reclassification. See, 67 FR 68805, November 13, 2002 and 68 FR 3410, January 24, 2003.

The effect of our January 24, 2003 final rule (68 FR 3410) that reclassified the Metropolitan Washington, DC ozone nonattainment area to severe nonattainment was to set a new

attainment deadline for this area of November 15, 2005, and to require Maryland, Virginia and the District of Columbia to submit, as necessary, a revision or revisions to their SIPs for the Metropolitan Washington, D.C. ozone nonattainment area to meet the CAA's requirements for severe one-hour ozone nonattainment areas. Pursuant section 182(i), EPA set March 1, 2004 as the submittal deadline for Maryland, Virginia and the District of Columbia to submit these new planning requirements.

B. What SIP Revisions Required by the Reclassification Have Not Been Submitted?

Maryland has not submitted a SIP revision to implement the penalty fee provisions specified by CAA section 185. Section 185 of the CAA requires that major stationary sources of volatile organic compound (VOC) and nitrogen oxide (NO_X) emissions located in severe ozone nonattainment areas pay a fee for every ton of annual emissions over 80 percent of a baseline amount if the area fails to attain the ozone national ambient air quality standards.[1] The fee is set at $5,000 per ton (adjusted annually using the same consumer price index (CPI) adjustment as is used for the Title V operating permit program fees).

Pursuant to our January 24, 2003 reclassification final rule (68 FR 3410), under section 182(d)(3) of the CAA, Maryland was required to submit a SIP revision to implement this "section 185 fee" provision in the Metropolitan Washington, DC area and has not done so.

EPA believes that Maryland has made submittals addressing all the other severe area elements with the exception of the section 185 fee provision. EPA has determined that these submittals are complete.[2]

II. What Is the Schedule of Sanctions and Other Consequences of This Action?

Under section 179(a) of the CAA, if EPA has not found that the State has made a complete submittal within 18 months of the effective date of EPA's finding, pursuant to CAA section 179(a) and 40 CFR 52.31, the offset sanction identified in CAA section 179(b) will be applied in the affected area. If the State still has not made a complete submission six months after the offset sanction is imposed, then the highway funding sanction will apply in the affected areas, in accordance with 40 CFR 52.31. In addition, CAA section 110(c) provides for EPA to promulgate a Federal implementation plan (FIP) no later than two years after a finding under section 179(a).

The 18-month clock will stop and the sanctions will not take effect if, within 18 months after the date of the finding, EPA finds that the State has made a complete submittal. In addition, EPA will not promulgate a FIP if the State makes the required SIP submittal and EPA takes final action to approve the submittal within two years of EPA's finding.

In addition, EPA recently promulgated regulations addressing the transition from the 1-hour ozone NAAQS to the 8-hour ozone NAAQS.[3] These regulations provide that once the 1-hour ozone NAAQS is revoked for an area, the section 185 fees provision for purposes of the 1-hour ozone NAAQS will no longer apply. Because at that time the State would no longer be obligated to submit a SIP revision for the section 185 requirement for the 1-hour standard, the sanctions and FIP clocks would stop upon revocation of the 1-hour ozone NAAQS.

III. Final Action

In this final rule, pursuant to section 179(a) of the CAA, EPA is issuing to the State of Maryland a finding of failure to submit a required SIP element for failure to submit a SIP revision to implement the provisions of section 185 of the CAA in the Metropolitan Washington, DC severe one-hour ozone nonattainment area.

At the same time as the signing of this document, the EPA Regional Administrator for Region III sent a letter to Maryland describing this finding in more detail. This letter and its enclosure is included in the docket to this rulemaking.

III. Notice-and-Comment Under the Administrative Procedures Act

This notice is a final agency action, but is not subject to the notice-and-comment requirements of the APA, 5 U.S.C. 553(b). EPA believes that because of the limited time provided to make findings of failure to submit and findings of incompleteness regarding SIP submissions or elements of SIP submission requirements, Congress did not intend such findings to be subject to notice-and-comment rulemaking. However, to the extent such findings are subject to notice-and-comment rulemaking, EPA invokes, consistent with past practice (for example, *see* at 65 FR at 81368, December 26, 200, or, *see* 61 FR at 36294, July 10, 1996), the good cause exception pursuant to the APA, 5 U.S.C. 553(b)(3)(B). Notice and comment are unnecessary because no significant judgment is involved in making a nonsubstantive finding of failure to submit SIP revisions or elements of SIP submissions required by the Clean Air Act. Furthermore, providing notice and comment would be impracticable because of the limited time provided under the statute for making such determinations. Finally, notice and comment would be contrary to the public interest because it would divert agency resources from the critical substantive review of complete SIPs. *See* 58 FR 51270 (October 1, 1993) and 59 FR 39832 (August 4, 1994).

IV. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The various CAA provisions discussed in this notice require the states to submit SIP revisions. This notice merely provides a finding that the states have not met those requirements. This notice does not, by itself, require any particular action by any State, local, or tribal government; or by the private sector and therefore is not a Federal mandate. This final rule will not have a significant impact on a substantial number of small entities because findings of failure to submit required SIP revisions do not by themselves create any new requirements. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities. Because this rule contains no Federal mandates

[1] Section 185 of the CAA only mentions major stationary sources of VOC emissions. However, section 182(f) requires the SIP for ozone nonattinment areas impose the same provisions on major stationary sources of NO_X emissions as those imposed upon major stationary sources of VOC emissions unless EPA determines that the NO_X provisions should not apply pursuant to one of the exceptions enumerated in section 182(f).

[2] EPA believes that the District of Columbia and Virginia each has made submittals addressing all the other severe area elements including the section 185 fee provision. EPA has determined that these submittals are complete.

[3] These regulations were published in the April 30, 2004, edition of the **Federal Register**

under the regulatory provisions of title II of the Unfunded Mandates Reform Act (UMRA) of 1995 (Pub. L. 104–4) for State, local, or tribal governments or the private sector, this rule does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the UMRA. This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This notice merely provides a finding that the State of Maryland has not submitted the SIP revision required by the CAA provisions discussed in this notice. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical. EPA believes that VCS are inapplicable to today's action because it does not require the public to perform activities conducive to the use of VCS. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

Under section 801(a)(1)(A) of the APA, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), EPA submitted, by the effective date of this rule , 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 General Accounting Office. This rule is not a "major rule" as defined by APA section 804(2), as amended. As noted above, EPA is issuing this action as a rulemaking. There is a question as to whether this action is a rule of "particular applicability," under section 804(3)(A) of APA as amended by SBREFA, and thus exempt from the congressional submission requirements, because this rule applies only to named States. In this case, EPA has decided to err on the side of submitting this rule to Congress, but will continue to consider this issue of the scope of the exemption for rules of "particular applicability."

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 20, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action issuing a finding that the State of Maryland has failed to submit a SIP revision to implement the "section 185 fee" provision in the Metropolitan Washington, DC area may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Dated: May 13, 2004.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 04–11432 Filed 5–20–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA213–4026; FRL–7663–7]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; The 2005 ROP Plan for the Pennsylvania Portion of the Philadelphia-Wilmington-Trenton Severe Area Severe 1-Hour Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving State Implementation Plan (SIP) revisions submitted by the Commonwealth of Pennsylvania. These revisions amend Pennsylvania's rate-of-progress (ROP) plan for 2005 for its portion of the Philadelphia-Wilmington-Trenton severe 1-hour ozone nonattainment area (the Philadelphia area). These revisions update the plan's emission inventories and motor vehicle emissions budgets (MVEBs) to reflect the use of MOBILE6 while continuing to satisfy the ROP requirement for 2005. The revisions also amend the contingency measures associated with the 2005 ROP plan. These SIP revisions are being approved in accordance with the Clean Air Act (the Act).

DATES: *Effective Date:* This final rule is effective on June 21, 2004.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103 and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Martin Kotsch, (215) 814–3335, or by e-mail at *Kotsch.Martin@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On March 16, 2004 (69 FR 12293), EPA published a notice of proposed rulemaking (NPR) proposing approval of revisions to Pennsylvania's 2005 ROP plan for its portion of the Philadelphia area. The revisions update the plan's mobile emissions inventories and 2005 MVEBs to reflect the use of MOBILE6, an updated model for calculating mobile emissions of ozone precursors. These SIP revisions were proposed under a procedure called parallel processing, whereby EPA proposes its rulemaking action on a SIP revision concurrently with a state's procedures for amending its SIP. The Pennsylvania Department of the Environmental Protection (PADEP) submitted the proposed SIP revisions to EPA on January 9, 2004 for parallel processing. On March 16, 2004 (69 FR 12293), EPA proposed approval of Pennsylvania's January 9, 2004 submittal. No comments were submitted to EPA on its March 16, 2004 proposal. The PADEP formally submitted the final SIP revisions to EPA on February 23, 2004. That final submittal had no substantive changes from the proposed version submitted on January 9, 2004. A detailed description of Pennsylvania's submittal and EPA's rationale for its proposed approval were presented in NPR published on March 16, 2004, and

will not be restated in their entirety here.

II. Summary of the SIP Revisions

These SIP revisions amend the 1990 and 2005 motor vehicle emissions inventories and 2005 MVEBs of Pennsylvania's 2005 ROP plan for its portion of the Philadelphia area to reflect the use of the MOBILE6 motor vehicle emissions model. The PADEP has demonstrated that the revised plan's levels of motor vehicle emissions, calculated using MOBILE6, continue to demonstrate the required ROP for 2005. These revised MOBILE6-based MVEBs in the 2005 ROP plan are identical to the MOBILE6-based MVEBs of the 2005 attainment demonstration plan for the Philadelphia area found adequate by EPA on May 28, 2003 (68 FR 31700). The revised mobile inventories and MVEBs being approved for Pennsylvania's 2005 ROP Plan are shown in tons per day (tpd) in Tables 1 and 2.

TABLE 1.—MOTOR VEHICLE EMISSIONS INVENTORIES OF PENNSYLVANIA'S 2005 ROP PLAN

Philadelphia-Wilmington-Trenton severe 1-hour ozone nonattainment	1990		2005	
	VOC (tpd)	NO_X (tpd)	VOC (tpd)	NO_X (tpd)
Pennsylvania Portion	239.95	252.93	79.69	144.73

TABLE 2.—MOTOR VEHICLE EMISSIONS BUDGETS IN PENNSYLVANIA'S 2005 ROP PLAN

Philadelphia-Wilmington-Trenton severe 1-hour ozone nonattainment area	2005 ROP plan	
	VOC (tpd)	NO_X (tpd)
Pennsylvania Portion	79.69	144.73

III. Final Action

EPA is taking final action to approve the SIP revisions submitted by the Commonwealth of Pennsylvania on February 23, 2004. These revisions amend the 1990 and 2005 motor vehicle emissions inventories and 2005 MVEBs of Pennsylvania's 2005 ROP plan for the Philadelphia area severe 1-hour ozone nonattainment area to reflect the use of MOBILE6.

These SIP revisions were proposed under a procedure called parallel processing, whereby EPA proposes a rulemaking action concurrently with a state's procedures for amending its SIP. On January 9, 2004, the PADEP submitted its proposed SIP revisions to EPA. On March 16, 2004 (69 FR 12293), EPA proposed approval of Pennsylvania's January 9, 2004 submittal. No comments were submitted to EPA on its EPA's March 16, 2004 proposal. The PADEP formally submitted the final SIP revisions to EPA on February 23, 2004. EPA has evaluated Pennsylvania's final SIP revisions submitted on February 23, 2004 and finds that no substantive changes were made from the proposed SIP revisions submitted on January 9, 2004.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

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

This action to approve revisions to Pennsylvania's 2005 ROP plan for its portion of the Philadelphia area to reflect the use of MOBILE6 may not be challenged later in proceedings to enforce their requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 10, 2004.

Donald S. Welsh,

Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart NN—Pennsylvania

■ 2. Section 52.2037 is amended by revising the section heading, redesignating the existing paragraph (i) as (i)(1) and adding paragraph (i)(2), and revising paragraph (k) to read as follows:

§ 52.2037 Control strategy plans for attainment and rate-of-progress: Ozone.

* * * * *

(i)(1) * * *

(2) EPA approves revisions to the Pennsylvania State Implementation Plan, submitted by the Secretary of the Pennsylvania Department of the Environmental Protection on February 23, 2004. These revisions amend Pennsylvania's rate-of-progress (ROP) plan for year 2005 for its Pennsylvania portion of the Philadelphia-Wilmington-Trenton 1-hour ozone nonattainment area. These revisions update the 2005 ROP plan's 1990 and 2005 motor vehicle emissions inventories and motor vehicle emissions budgets to reflect the use of the MOBILE6 emissions model, and establish revised motor vehicle emissions budgets of 79.69 tons per day (tpd) of volatile organic compounds and 144.73 tpd of nitrogen oxides.

* * * * *

(k) EPA approves the following mobile budgets of the post-1996 rate of progress plans and the 2005 attainment plan:

TRANSPORTATION CONFORMITY BUDGETS FOR THE PHILADELPHIA AREA

Type of control strategy SIP	Year	VOC (tpd)	NO_X (tpd)	Date of adequacy determination or SIP approval date
Post-1996 ROP Plan	1999	88.6	109.6	June 23, 2000 (65 FR 36438, June 8, 2000).
Post-1996 ROP Plan	2002	69.52	93.13	June 23, 2000 (65 FR 36438, June 8, 2000).
Post-1996 ROP Plan	2005	79.69	144.73	June 21, 2004 (May 21, 2004, Insert Federal Register page citation).
Attainment Demonstration	2005	79.69	144.73	June 12, 2003 (68 FR 31700, May 28, 2003).

(1) [Reserved]

(2) [Reserved]

[FR Doc. 04–11339 Filed 5–20–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 287–0455; FRL–7665–9]

Withdrawal of Direct Final Rule Revising the California State Implementation Plan, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: On March 22, 2004 (69 FR 13225), EPA published a direct final approval of a revision to the California State Implementation Plan (SIP). This revision concerned South Coast Air Quality Management District (SCAQMD) Rules 1133—Composting and Related Operations—General Administrative Requirements, 1133.1—Chipping and Grinding Activities, and 1133.2—Emission Reductions from Co-Composting Operations. The direct final action was published without prior proposal because EPA anticipated no adverse comment. The direct final rule stated that if adverse comments were received by April 21, 2004, EPA would publish a timely withdrawal in the **Federal Register**. EPA received timely adverse comments and, therefore, is withdrawing the direct final approval. EPA will address the comments in a subsequent final action based on the parallel proposal also published on March 22, 2004 (69 FR 13272). As stated in the parallel proposal, EPA will not institute a second comment period on this action.

DATES: *Effective Date:* The direct final rule published on March 22, 2004, at 69 FR 13225 is withdrawn as of May 21, 2004.

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, EPA Region IX, at either (415) 947–4111, or *wamsley.jerry@epa.gov*.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 7, 2004.

Laura Yoshii,

Acting Regional Administrator, Region IX.

■ Accordingly, the amendment to 40 CFR 52.220, published in the **Federal**

Register on March 22, 2004 (69 FR 13227), which was to become effective on May 21, 2004, is withdrawn.

[FR Doc. 04–11555 Filed 5–20–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–1199; MM Docket No. 01–271; RM–10278; 10380]

Radio Broadcasting Services; O'Donnell, Post and Roaring Springs, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Maurice Salsa, allots Channel 249A at O'Donnell and Roaring Springs, Texas, as each community's first local aural transmission service (RM–10380). At the request of Katherine Pyeatt, we also dismiss the petition for rule making proposing the allotment of Channel 249C2 at Post, Texas (RM–10278). *See* 66 FR.52734, October 17, 2001. Channel 249A can be allotted to O'Donnell in compliance with the Commission's minimum distance separation requirement with a site restriction of 14.6 kilometers (9.1 miles) east to avoid a short-spacing to the vacant allotment site for Channel 248C2, Denver City, Texas, and the licensed site for Station KODM(FM), Channel 250C1, Texas. The coordinates for Channel 249A at O'Donnell are 32–55–32 North Latitude and 101–40–59 West Longitude. Likewise, Channel 249A can be allotted to Roaring Springs with a site restriction of 14.8 kilometers (9.2 miles) northeast to avoid a short-spacing to the proposed allotment for Channel 250C3 at Crowell, Texas. The coordinates for Channel 249A at Roaring Springs are 33–57–42 North Latitude and 100–42–53 West Longitude.

DATES: Effective June 18, 2004. A filing window for Channel 249A at O'Donnell and Roaring Springs, Texas, will not be opened at time. Instead, the issue of opening a filing window for these channels will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–271, adopted April 30, 2004, and released May 4, 2004. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20054.

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

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

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

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 54, 303, 334, 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding O'Donnell, Channel 249A; and by adding Roaring Springs, Channel 249A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–11543 Filed 5–20–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–1200; MB Docket No. 02–212; RM–10516 & 10618]

Radio Broadcasting Services; Crystal Beach, TX, Lumberton, TX, Vinton, LA and Winnie, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a petition filed by Charles Crawford requesting the allotment of Channel 287A at Vinton, Louisiana, the Commission issued a Notice of Proposed Rule Making. See 67 FR 53903, August 20, 2002. This document grants a counterproposal filed by Tichenor License Corporation requesting the following: reallotment of Channel 264C from Winnie, Texas, to Lumberton, Texas, and modification of the license for Station KOBT to specify operation at Lumberton, and substitution of Channel 287C2 for Channel 287A at Crystal Beach, Texas, reallotment of Channel 287C2 to Winnie, Texas, and modification of the license for Station KLTO to specify operation on Channel 287C2 at Winnie, Texas. The coordinates for Channel 264C at Lumberton are 30–03–05 and 94–31–37 and the coordinates for Channel 287C2 at Winnie are 29–41–45 and 94–19–35. The petition filed by Charles Crawford has been dismissed. With this action this proceeding is terminated.

DATES: Effective June 18, 2004.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02–212, adopted April 30, 2004, and released May 4, 2004. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 287A at Crystal Beach, by removing Channel 264C and

adding Channel 287C2 at Winnie and by adding Lumberton, Channel 264C.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–11544 Filed 5–20–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–971; MB Docket No. 02–73; RM–10356, 10551, 10553, and 10554]

Radio Broadcasting Services; Bagdad, AZ; Dewey-Humboldt, AZ; First Mesa, AZ; Flagstaff, AZ; Globe, AZ; Grand Canyon Village, AZ; and Safford, AZ

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of 3 Point Media-Arizona, LLC (formerly Arizona Radio Partners, LLC), licensee of FM Station KJNA, Flagstaff, Arizona, and NPR Phoenix, LLC, makes the following changes to the FM Table of Allotments: The Division deletes Channel 248C at Flagstaff, Arizona, allots Channel 248C at Dewey-Humboldt, Arizona, Channel 247C at First Mesa, Arizona, and Channel 273C1 at Grand Canyon Village, Arizona, substitutes Channel 269C3 for a vacant allotment of Channel 246C3 at Bagdad, Arizona, substitutes Channel 231C2 for Channel 247C2 at Globe, Arizona, and substitutes Channel 232C2 for Channel 231C1 at Safford, Arizona. Channel 247C can be allotted to First Mesa, Arizona, consistent with the engineering requirements of the Commission's Rules, at coordinates of 35–41–09 NL and 110–21–43 WL, with a site restriction of 16.8 kilometers (10.5 miles) south of First Mesa. Channel 273C1 can be allotted to Grand Canyon Village, Arizona, consistent with the engineering requirements of the Commission's Rules, at city reference coordinates of 36–02–47 NL and 112–09–12 WL, with no site restriction required. Channel 248C can be allotted to Dewey-Humboldt, Arizona, consistent with the engineering requirements of the Commission's Rules, at coordinates of 34–14–42 NL and 112–21–27 WL, with a site restriction of 33.3 kilometers (20.7 miles) south of Dewey-Humboldt. Channel 269C3 can be substituted for Channel 246C at Bagdad, Arizona, consistent with the engineering requirements of the Commission's Rules, at coordinates of 34–36–11 NL and 113–12–04 WL, with a site restriction of 2.5 kilometers (1.5 miles) north of Bagdad. Channel 231C2 can be substituted for Channel 247C2 at Globe, Arizona, consistent with the engineering requirements of the Commission's Rules, at coordinates of 33–17–37 NL and 110–50–09 WL, with a site restriction of 12.1 kilometers (7.5 miles) southwest of Globe. Channel 232C2 can be substituted for Channel 231C1 at Safford, Arizona, consistent with the engineering requirements of the Commission's Rules, at coordinates of 32–51–02 NL and 109–32–15 WL, with a site restriction of 16 kilometers (9.9 miles) east of Safford. Mexican concurrence was received on March 8, 2004, for the allotment of Channel 269C3 at Bagdad, Arizona, and the allotment of Channel 231C2 at Globe, Arizona, at the reference coordinates indicated. The allotment of Channel 232C2 at Safford, Arizona, is conditioned upon concurrence by Mexico, because the allotment is located within 320 kilometers (199 miles) of the Mexican border. *See* **SUPPLEMENTARY INFORMATION.**

DATES: Effective June 10, 2004.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02–73, adopted April 12, 2004, and released April 14, 2004. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com*. The Audio Division granted Station KRXS–FM, Globe, Arizona a license to specify operation on Channel 247C2 in lieu of Channel 247C3, which is not reflected in the FM Table of Allotments. *See* BPH–20020515AAG.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by removing Channel 246C3 and adding Channel 269C3 at Bagdad, by adding Dewey-Humboldt, Channel 248C, by adding First Mesa, Channel 247C, by removing Channel 248C at Flagstaff, by removing Channel 247C3 and adding Channel 231C2 at Globe, by adding Grand Canyon Village, Channel 273C1, and by removing Channel 231C1 and adding Channel 232C2 at Safford.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–11549 Filed 5–20–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–1080; MM Docket No. 00–148; RM–9939, RM–10198]

Radio Broadcasting Services; Archer City, TX, Ardmore, OK, Converse, TX, Durant, OK, Elk City, OK, Flatonia, TX, Georgetown, TX, Healdton, OK, Ingram, TX, Keller, TX, Knox City, TX, Lakeway, TX, Lago Vista, TX, Lawton, OK, Llano, TX, McQueeney, TX, Nolanville, TX, Purcell, OK, Quanah, San Antonio, Seymour, Waco, and Wellington, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule, denial of petition for reconsideration.

SUMMARY: This document denies a Petition for Partial Reconsideration and Request for Expedited Action filed by Rawhide Radio, L.L.C., Capstar TX Limited Partnership and Clear Channel Broadcast Licenses, Inc. *See* 68 FR 26557, published May 16, 2003. With this action, the proceeding is terminated.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order* in MM Docket No. 00–148, adopted April 22, 2004, and released April 27, 2004.

The full text of this decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*. This document is not subject to the Congressional Review Act.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–11551 Filed 5–20–04; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 69, No. 99
Friday, May 21, 2004

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 958

[Docket No. FV04–958–02 PR]

Onions Grown in Certain Designated Counties in Idaho, and Malheur County, OR; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would increase the assessment rate established for the Idaho-Eastern Oregon Onion Committee (Committee) for the 2004–2005 and subsequent fiscal periods from $0.095 to $0.105 per hundredweight of onions handled. The Committee locally administers the marketing order that regulates the handling of onions grown in designated counties in Idaho, and Malheur County, Oregon. Authorization to assess onion handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period begins July 1 and ends June 30. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by June 21, 2004.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; E-mail: *moab.docketclerk@usda.gov;* or Internet: *http://www.regulations.gov.* All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be 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: Barry Broadbent, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Ave, Suite 385, Portland, OR 97204; telephone: (503) 326–2724; Fax: (503) 326–7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491; Fax: (202) 720–8938.

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 130 and Marketing Order No. 958, both as amended (7 CFR part 958), regulating the handling of onions grown in certain designated counties in Idaho, and Malheur County, Oregon, 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. Under the marketing order now in effect, Idaho-Eastern Oregon onion handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable onions beginning on July 1, 2004, and continue until amended, suspended, or terminated. This rule would 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 proposed rule would increase the assessment rate established for the Committee for the 2004–2005 and subsequent fiscal periods from $0.095 to $0.105 per hundredweight of onions handled.

The Idaho-Eastern Oregon onion marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The Committee consists of six producer members, four handler members and one public member. Each member is familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2003–2004 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on April 1, 2004, and unanimously recommended 2004–2005 expenditures of $997,442. In comparison, last year's budgeted expenditures were $957,000. At that same meeting, the Committee, in a vote of seven in favor, two opposed (desired continuation of the current rate), and

one abstention, recommended increasing the assessment rate to $0.105 per hundredweight of onions handled. The assessment rate of $0.105 is $0.01 higher than the rate currently in effect. The order authorizes the Committee to establish an operating reserve of up to one fiscal period's operational expense. However, the Committee's policy is to maintain the operating reserve at a level of approximately one-half of one fiscal period's operational expenses. The Committee, over the last five fiscal periods, has reduced its operating reserve to slightly below this level. The Committee recommended the $0.01 increase so the total of assessment income ($932,400), contributions ($75,600), interest income ($7,000), and other income ($2,000) would sufficiently fund the recommended expenses for 2004–2005 of $997,442. The increased assessment income would also add approximately $19,558 to the operating reserve, increasing it to an estimated $504,661 at the end of the 2004–2005 fiscal period.

The major expenditures recommended by the Committee for the 2004–2005 fiscal period include $10,000 for committee expenses, $163,482 for salary expenses, $81,9600 for travel/ office expenses, $60,000 for production research expenses, $32,000 for export market development expenses, $600,000 for promotion expenses, and $50,000 for unforeseen marketing order contingencies. Budgeted expenses for these items in 2002–2003 were $10,000, $148,353, $72,610, $59,170, $27,250, $589,617, and $50,000, respectively.

The Committee estimates that fresh market onion shipments for the 2004–2005 fiscal period will be approximately 8,880,000 hundredweight, which should provide $932,400 in assessment income. Income derived from handler assessments, along with contributions ($75,600), interest income ($7,000), and other income ($2,000) would be sufficient to cover budgeted expenses and increase the operating reserve approximately $19,558. The Committee estimates that its operating reserve will be approximately $485,103 at the beginning of the 2004–2005 fiscal period. Funds in the reserve would be kept within the maximum permitted by the order of approximately one fiscal years's operational expenses (§ 958.44).

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate would be in effect for an indefinite period, the Committee would continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2004–2005 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

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 37 handlers of Idaho-Eastern Oregon onions who are subject to regulation under the order and approximately 250 onion producers in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (SBA)(13 CFR 121.201) as those whose annual receipts are less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $750,000.

The Committee estimates that 32 of the 37 handlers of Idaho-Eastern Oregon onions ship under $5,000,000 worth of onions on an annual basis. According to the *Vegetables 2003 Summary* reported by the National Agricultural Statistics Service, the total farm gate value of onions in the regulated production area for 2003 was $130,768,000. Therefore, the 2003 average gross revenue for an onion producer in the regulated production area was $523,072. Based on this information, it can be concluded that the majority of handlers and producers of Idaho-Eastern Oregon onions may be classified as small entities.

This rule would increase the assessment rate established for the Committee for the 2004–2005 and subsequent fiscal periods from $0.095 to $0.105 per hundredweight of onions handled. The Committee recommended 2004–2005 expenditures of $997,442 and an assessment rate of $0.105 per hundredweight, which is $0.01 higher than the rate currently in effect. The quantity of assessable onions for the 2004–2005 fiscal period is estimated at 8,880,000 hundredweight. Thus, the $0.105 rate should provide $932,400 in assessment income, which along with anticipated contributions, interest income, and other income should cover budgeted expenses.

The major expenditures recommended by the Committee for the 2004–2005 fiscal period include $10,000 for committee expenses, $163,482 for salary expenses, $81,960 for travel/ office expenses, $60,000 for production research expenses, $32,000 for export market development expenses, $600,000 for promotion expenses, and $50,000 for unforeseen marketing order contingencies. Budgeted expenses for these items in 2003–2004 were $10,000, $148,353, $72,610, $59,170, $27,250, $589,617, and $50,000, respectively.

The Committee reviewed and unanimously recommended 2004–2005 expenditures of $997,442. This budget would increase the budget line items for salary expenses, travel and office expenses, research expenses, export expenses, and promotion expenses. Committee expenses and marketing order contingency would remain the same. Prior to arriving at this budget, the Committee considered information from various sources, including the Idaho-Eastern Oregon Onion Executive, Research, Export, and Promotion Committees. These subcommittees discussed alternative expenditure levels, based upon the relative value of various research and promotion projects to the Idaho-Eastern Oregon onion industry. The assessment rate of $0.105 per hundredweight of assessable onions was then determined by taking into consideration the estimated level of assessable shipments, other revenue sources, and the Committee's goal of not having to use reserve funds during 2004–2005.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the producer price for the 2004–2005 season could be about $10.80 per hundredweight. Therefore, the estimated assessment revenue for the 2004–2005 fiscal period as a percentage

of total producer revenue could be about 1.1 percent.

This proposed rule would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meetings were widely publicized throughout the Idaho-Eastern Oregon onion industry and all interested persons were invited to attend the meetings and participate in Committee deliberations on all issues. Like all Committee meetings, the April 1, 2004, meeting was open to the public 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.

This proposed rule would not impose additional reporting or recordkeeping requirements on either small or large Idaho-Eastern Oregon onion 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.

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.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. Thirty days is deemed appropriate because: (1) The 2004–2005 fiscal period begins on July 1, 2004, and the order requires that the rate of assessment for each fiscal period apply to all assessable onions handled during such fiscal period; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (3) handlers are aware of this action which was recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years.

List of Subjects in 7 CFR Part 958

Onions, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 958 is proposed to be amended as follows:

PART 958—ONIONS GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON

1. The authority citation for 7 CFR part 958 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 958.240 is revised to read as follows:

§ 958.240 Assessment rate.

On and after July 1, 2004, an assessment rate of $0.105 per hundredweight is established for Idaho-Eastern Oregon onions.

Dated: May 17, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–11514 Filed 5–20–04; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–167217–03]

RIN 1545–BD03

Electronic Filing of Duplicate Forms 5472; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of cancellation of a public hearing on regulations providing that a Form 5472 that is timely filed electronically is treated as satisfying the requirement timely to file a duplicate Form 5472 with the Internal Revenue Service Center in Philadelphia, Pennsylvania.

DATES: The public hearing originally scheduled for May 27, 2004, at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: Robin R. Jones of the Publications and Regulations Branch, Legal Processing Division at (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on Monday, February 9, 2004 (69 FR 5940), announced that a public hearing was scheduled for May 27, 2004, at 10 a.m., in the auditorium. The subject of the public hearing is proposed regulations under section 6038A and 6038C of the Internal Revenue Code. The public comment period for these regulations expired on May 10, 2004. The outlines of oral comments were due on May 6, 2004.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit an outline of the topics to be addressed. As of Tuesday, May 18, 2004, no one has requested to speak. Therefore, the public hearing scheduled for May 27, 2004, is cancelled.

Cynthia E. Grigsby,

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

[FR Doc. 04–11568 Filed 5–18–04; 2:07 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD01–04–002]

RIN 2115–AA00

Security Zones; Democratic National Convention, Boston, MA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a series of temporary security zones on the Charles River in the vicinity of the FleetCenter/North Station, throughout a portion of Boston Inner Harbor in the vicinity of Logan International Airport and surrounding Very Important Person (VIP) vessels designated by the Captain of the Port (COTP) Boston, Massachusetts, to be in need of Coast Guard escort for security reasons while they are transiting the COTP Boston, Massachusetts zone. These temporary zones are needed to safeguard protectees, the public, designated VIP vessels and crews, other vessels and crews, and the infrastructure within the COTP Boston, Massachusetts, zone from terrorist or subversive acts during the Democratic National Convention: A National Special Security Event, being held from July 26, 2004 to July 29, 2004 at the

Fleet Center/North Station Facilities, in Boston, Massachusetts. These security zones will prohibit entry into or movement within certain portions of the Charles River in the vicinity of the FleetCenter/North Station, Boston Inner Harbor in the vicinity of Logan International Airport, and 50 yards surrounding designated VIP vessels in the COTP Boston, Massachusetts zone, during the specified closure periods within the July 24, 2004 to July 31, 2004 timeframe.

DATES: Comments and related material must reach the Coast Guard on or before June 21, 2004.

ADDRESSES: You may mail comments and related material to Marine Safety Office Boston, 455 Commercial Street, Boston, MA. The Marine Safety Office Boston maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of the docket and will be available for inspection or copying at Marine Safety Office Boston between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Petty Officer Daniel Dugery, Waterways Safety and Response Division, Marine Safety Office Boston, at (617) 223–3000.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking, CGD01–04–002, indicate the specific section of this document to which each comment applies, and give the reason for each comment.

Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know your comments reached us, please enclose a stamped, self addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not plan to hold a public meeting. The United States Secret Service (USSS) and the United States Coast Guard have conducted numerous outreach meetings with port users and the affected maritime community regarding the proposed restrictions. However, you may submit a request for a meeting by writing to Marine Safety Office Boston at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that a public meeting would aid this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

Background and Purpose

In light of terrorist attacks on New York City and on the Pentagon in Arlington, VA, on September 11, 2001, and the continuing concern for future terrorist and or subversive acts against the United States, especially at events where a large number of persons are likely to congregate, the Coast Guard proposes to establish temporary security zones in certain waters of the Charles River in the vicinity of the FleetCenter/North Station, certain waters of Boston Inner Harbor in the vicinity of Logan International Airport, and surrounding VIP designated vessels identified by the COTP Boston, Massachusetts during the Democratic National Convention (DNC). The DNC has been designated a National Special Security Event (NSSE) and will occur between July 26, 2004, to July 29, 2004, at the FleetCenter/North Station facilities, in Boston, Massachusetts. Security measures for this event, including security zones proposed herein, are necessary from July 24, 2004, to July 31, 2004, and are needed to safeguard maritime transportation infrastructure, the public, and designated protectees, and to safeguard designated VIP vessels carrying protectees, from potential acts of violence or terrorism during DNC activities.

The planning for these security zones has been conducted in conjunction with, and as a result of requests from, the USSS, the lead federal agency for the DNC, and the U.S. Capitol Police. This proposed rule would temporarily close sections of the Charles River in the vicinity of the FleetCenter/North Station, certain Boston Inner Harbor water areas along the perimeter of Logan International Airport, and surrounding designated VIP vessels identified by the COTP Boston, Massachusetts, to be in need of Coast Guard escort for security reasons while they are transiting the COTP Boston, Massachusetts zone, at specified times from July 24, 2004 to July 31, 2004.

For purposes of this rulemaking, designated VIP vessels include any vessels designated by the Coast Guard COTP Boston, Massachusetts to be in need of Coast Guard escort in the COTP Boston, Massachusetts zone, based on a request from the USSS or the Capitol Police. Any VIP designated vessel may contain protectees. "Protectees" for the purposes of the U.S. Secret Service include the President of the United States and former presidents and their spouses, the Democratic nominee for president, and the Democratic nominee for vice president and their spouses. "Protectees" for the purposes of the Capitol Police include particular U.S. Congressmen. One or more Coast Guard Cutters or small boats will escort designated VIP vessels deemed in need of escort protection.

The Captain of the Port Boston, Massachusetts will notify the maritime community of the periods during which the security zones will be enforced. Broadcast notifications will be made to the maritime community advising them of the boundaries of the zones.

No person or vessel may enter or remain in the prescribed security zones at any time without permission of the Captain of the Port. Each person or vessel in a security zone must obey any direction or order of the COTP, or the designated Coast Guard on-scene representative. The COTP may take possession and control of any vessel in a security zone and/or remove any person, vessel, article or thing from a security zone. No person may board, take or place any article or thing on board any vessel or waterfront facility in a security zone without permission of the COTP. Any violation of any security zone described herein, is punishable by, among others, civil penalties (not to exceed $32,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment for not more than 6 years and a fine for not more than $250,000 for an individual and $500,000 for an organization), in rem liability against the offending vessel and license sanctions. This rule is established under the authority contained in 50 U.S.C. 191, 33 U.S.C. 1223 and 1226.

As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399), Congress amended section 7 of the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1226, to allow the Coast Guard to take actions, including the establishment of security zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. Moreover, the Coast Guard has authority to establish security zones pursuant to the Act of June 15, 1917, as amended by the Magnuson Act of August 9, 1950 (50 U.S.C. 191 *et seq.*) (the "Magnuson Act") and implementing regulations promulgated by the President in Subparts 6.01 and 6.04 of part 6 of Title 33 of the Code of Federal Regulations.

Discussion of Proposed Rule

The Charles River security zone in the vicinity of the FleetCenter/North Station would extend from the western most portion of the Monsignor O'Brien Highway Bridge/Museum of Science structure as the western boundary, to a line drawn across the Charles River, 50 yards east and parallel to, the Charlestown Bridge, as the eastern boundary. This security zone is intended to protect the north side of the FleetCenter/North Station, the USSS-designated NSSE venue for the DNC, which abuts the Charles River. The Fleet Center/North Station buildings themselves are located in the North End of Boston and are surrounded by the following roadways: Causeway Street, Lomasney Way, Nashua Street and a portion of Route I–93. The above-described waters of the Charles River will be temporarily closed to all vessel traffic, except for those vessels described below, unless authorized by the Coast Guard Captain of the Port. Only commercial vessels that transit this area on daily or regular routes will be allowed to transit, as prearranged with the USSS and U.S. Coast Guard, and authorized by on-scene Coast Guard personnel, after having been swept by law enforcement personnel. Any vessel allowed to transit will be escorted through the area by law enforcement patrol craft. The Residents Inn Hotel pier in Charlestown, at the mouth of the Charles River, is just inside the eastern most boundary of the zone. Vessels may have access to this pier with prior approval of the USSS and U.S. Coast Guard, and authorized by on-scene Coast Guard personnel. The Charles River Zone would be effective from 12:01 a.m., e.d.t., on July 26, 2004, until 2 a.m., e.d.t., on July 30, 2004.

The temporary security zone around Logan International Airport (The Logan Airport DNC Zone) is needed to provide protection from waterborne threats to aircraft carrying certain protectees as they arrive and depart from the airport. This zone would include the area between the mean high water line around the airport and a line measured 250 feet seaward of and parallel to the mean high water line. The dimensions of this zone are marked by a line of marker buoys along the Logan International Airport shoreline. Only commercial vessels that transit this area on daily or regular routes will be allowed to transit, as prearranged with the USSS and U.S. Coast Guard, and authorized by on-scene Coast Guard personnel. Any vessel allowed to transit will be escorted through the area by law enforcement patrol craft. All vessel transits will be restricted from the Logan Airport DNC zone 15 minutes prior to and after the departure and/or landing of aircraft carrying protectees. The Massachusetts Marine Environmental Police will coordinate commercial shoreline shell fishing vessels that operate in the area. The Logan Airport DNC zone would be in effect from 8 a.m., e.d.t., on July 24, 2004, until 10 p.m., e.d.t., on July 31, 2004.

The temporary security zones surrounding VIP vessels designated by the COTP Boston, Massachusetts, are needed for security reasons while such VIP designated vessels are transiting the COTP Boston, Massachusetts zone. These temporary zones will encompass a distance of fifty (50) yards surrounding any designated VIP vessel carrying protectees. These zones would only be implemented as deemed necessary at or near the time of the designated VIP vessel transit by the USSS or the U.S. Capitol Police. The designated VIP vessel zones could be in effect at various times from 8 a.m., e.d.t., on July 24, 2004, until 10 p.m., e.d.t., on July 31, 2004.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 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).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of the DHS is unnecessary.

Although this proposed regulation will temporarily prevent traffic from transiting a portion of the Charles River, Boston Inner Harbor and surrounding certain VIP designated vessels during the specified effective periods, the effects of this regulation will be minimized based on several factors. Vessels that historically have conducted daily business in the area of the Charles River security zone will be allowed to transit, as long as prearranged as discussed, thereby preventing disruption to their normal business. The potential delays associated with vessels being swept and escorted through the zone will be minimal. The Logan Airport DNC security zone mirrors an existing state security zone, and therefore users of these waters will not encounter restrictions significantly different from those already in existence. The temporary security zones surrounding VIP designated vessels are included in this rule as a precautionary measure should they become necessary. At this time, no VIP designated vessel security zones are scheduled. If they are deemed necessary during the event and are subsequently implemented, these zones are limited in scope, enough so that vessels may transit safely outside of the zones and still make use of the waterway. Additionally, VIP designated vessels will be advised to operate in such a manner as to avoid restricting the main shipping channels from use by large commercial vessels that require the depth of water to operate safely. Lastly, advance notice to waterways users has been, and will continue to be made via outreach meetings, informational brochures, safety marine information broadcasts, and local notice to mariners.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in these security zones during this event. However, this proposed rule will not have a significant economic impact on a substantial number of small entities due to: Transit accommodations that are being made for regular commercial operators within the Charles River and Logan Airport DNC zones; the minimal time that vessels will be restricted from the area of the zones; vessels can pass safely around the zones; vessels will have to wait only a short time for the VIP designated vessels to pass if they cannot safely pass outside the zones; and advance notifications will be made to the local maritime community by marine information broadcasts.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (*see*

ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Chief Petty Officer Daniel Dugery Waterways Safety and Response, Marine Safety Office Boston, (617) 223–3000.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

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

Environment

We have analyzed this proposed 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 draft "Environmental Analysis Check List" and a draft "Categorical Exclusion Determination" (CED) are available in the docket where indicated under **ADDRESSES.** Comments on this section will be considered before we make the final decision on whether the rule should be categorically excluded from further environmental review.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Safety measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 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; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T04–002 to read as follows:

§ 165.T04–002 Security Zones; Democratic National Convention, Waters of the Charles River, Boston Inner Harbor in the vicinity of Logan International Airport, and designated Very Important Person vessel transits, Boston, Massachusetts, Captain of the Port Zone.

(a) *Location.* The following areas are security zones:

(1) All navigable waters of the Charles River from the westernmost portion of the Monsignor O'Brien Highway Bridge/Museum of Science structure as the western boundary, to a line drawn across the Charles River, 50 yards east and parallel to, the Charlestown Bridge, as the eastern boundary.

(2) All waters between the mean high water line around the perimeter of Logan International Airport and a line measured 250 feet seaward of and parallel to the mean high water line.

(3) All navigable waters 50 yards around any designated Very Important Person vessel carrying specified protectees during Democratic National Convention activities, in the Captain of the Port Boston, Massachusetts zone.

(b) *Regulations.* (1) Entry into or remaining in these zones is prohibited unless authorized by the Coast Guard Captain of the Port, Boston.

(2) Persons desiring to transit the area of the security zones may contact the Captain of the Port at telephone number 617–223–3000/5750 or the authorized on-scene patrol representative on VHF channel 16 (156.8 MHz) to seek permission to transit the areas. If permission is granted, all persons and vessels must comply with the

instructions of the Captain of the Port or his or her designated representative.

(3) All persons and vessels must comply with the instructions of the Captain of the Port or the designated on-scene Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant and petty officers of the Coast Guard on board Coast Guard Auxiliary, and local, state and federal law enforcement vessels.

(4) The Captain of the Port or his designated representative will notify the maritime community of periods during which these zones will be enforced. The Captain of the Port or his designated representative will identify designated Very Important Person vessel transits by way of marine information broadcast. Emergency response vessels are authorized to move within the zone, but must abide by restrictions imposed by the Captain of the Port or his designated representative.

(c) *Authority.* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

(d) *Enforcement period.* This section will be enforced from:

(1) 12:01 a.m. e.d.t., on July 26, 2004, until 2 a.m. e.d.t., on July 30, 2004, with respect to the Charles River Zone described in paragraph (a)(1).

(2) 8 a.m. e.d.t., on July 24, 2004 until 10 p.m. e.d.t., on July 31, 2004, with respect to the Logan Airport DNC Zone described in paragraph (a)(2).

(3) 8 a.m. e.d.t., on July 24, 2004, until 10 p.m. e.d.t., on July 31, 2004, with respect to the moving security zones described in paragraph (a)(3) around designated Very Important Person vessels carrying specified protectees, as deemed necessary by the USSS or U.S. Capitol Police, 15 minutes prior to and while they are onboard the vessel.

Dated: May 5, 2004.

Brian M. Salerno,

Captain, U.S. Coast Guard, Captain of the Port, Boston, Massachusetts.

[FR Doc. 04–11589 Filed 5–20–04; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA302–0454; FRL–7665–8]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the South Coast Air Quality Management District (SCAQMD) portion of the California State Implementation Plan (SIP). These revisions concern oxides of nitrogen (NO_X) and oxides of sulfur (SO_X) emissions from facilities emitting 4 tons or more per year of NO_X and/or SO_X in the year 1990 or any subsequent year. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). These rules are part of the SCAQMD's Regional Clean Air Incentives Market (RECLAIM) program. We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by June 21, 2004.

ADDRESSES: Send comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901 or e-mail to *steckel.andrew@epa.gov*, or submit comments at *http://www.regulations.gov*.

You can inspect copies of the submitted SIP revisions, EPA's technical support documents (TSDs), and public comments at our Region IX office during normal business hours by appointment. You may see copies of the submitted SIP revisions by appointment at the following locations:

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

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

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

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

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

FOR FURTHER INFORMATION CONTACT: Thomas C. Canaday, EPA Region IX, (415) 947–4121, *canaday.tom@epa.gov*.

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

Table of Contents

I. The State's Submittal

A. What Rules Did the State Submit?

Table 1 lists the rules addressed by this proposal with the dates that they were adopted by local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule #	Rule title	Adopted	Submitted
SCAQMD	2007	Trading Requirements	12/05/03	02/20/04
SCAQMD	2011	Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Sulfur (SO_X) Emissions.	12/05/03	02/20/04
SCAQMD	2012	Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Nitrogen (NO_X) Emissions.	12/05/03	02/20/04

On March 19, 2004, these rule submittals were found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. Are There Other Versions of These Rules?

We approved previous versions of Rules 2007, 2011 and 2012 into the SIP on September 4, 2003.

C. What Is the Purpose of the Submitted Rule Revisions?

The RECLAIM program is intended to allow facilities subject to the program to meet their emission reduction requirements in the most cost-effective manner. The program was designed to provide incentives for industry to reduce emissions and develop innovative pollution control technologies, as well as give facilities added flexibility in meeting emission reduction requirements. Each facility under the program was given an allocation of RECLAIM Trading Credits (RTCs) based on a declining balance equivalent to the emissions levels that would have occurred if the facility continued to operate under the then current command-and-control regulations. Facilities within the RECLAIM program must reconcile their emissions with their RTC holdings and have the option of doing so by either installing control equipment, modifying their activity, or purchasing RTCs from other facilities.

Beginning in June 2000, RECLAIM program participants experienced a sharp and sudden increase in NO_X RTC prices for both the 1999 and 2000 compliance years. In response to this SCAQMD adopted and EPA subsequently approved into the California SIP rule amendments designed to lower and stabilize RTC prices by increasing supply, reducing demand, and increasing the exchange of RTC trading information. Those rule revisions separated power producing facilities from the rest of the RECLAIM market and RTC trading by power producers was limited to isolate the rest of the market from the power producers' RTC demands. For further information on this previous modification to the RECLAIM program see EPA's proposed approval of the RECLAIM program rule amendments dated May 13, 2002 (67 FR 31998).

The submitted rule revisions that are the subject of today's notice of proposed rulemaking allow power producing facilities to re-enter the general trading market of the RECLAIM program. Further rule revisions adopted by SCAQMD clarify the Continuous Emission Monitoring Systems (CEMS) requirements for modified equipment operated at RECLAIM facilities. With regard to the power producing facilities, Rule 2007—Trading Requirements has been revised to lift the trading restrictions that were placed on power producers under the previous amendments to the RECLAIM program. The currently submitted changes to Rule 2007 allow power producers to use RECLAIM trading credits (RTCs) to reconcile emissions, and to sell or transfer RTCs below their original allocation after compliance year 2003. Rule 2011—Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Sulfur (SO_X) Emissions; and Rule 2012—Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Nitrogen (NO_X) Emissions have been amended to clarify that the 90-day recertification period for CEMS applies to new CEMS or when a component of an existing CEMS is added to an existing or modified major RECLAIM source.

The TSD has more information about these rules.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rules?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (see section 182(a)(2)(A) and 182(f) of the Act), and must not relax existing requirements (see sections 110(l) and 193 of the Act). The SCAQMD regulates an ozone nonattainment area (see 40 CFR part 81), so Rules 2007, 2011, and 2012 must fulfill RACT.

Guidance and policy documents that we used to help evaluate enforceability and RACT requirements consistently include the following:

1. "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule," (the NO_X Supplement), 57 FR 55620, November 25, 1992.

2. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988 (the Bluebook).

3. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).

4. "Improving Air Quality with Economic Incentive Programs," January 2001, Office of Air and Radiation, EPA–452/R–01–001 (EIP Guidance). This guidance applies to discretionary economic incentive programs (EIPs) and represents the agency's interpretation of what EIPs should contain in order to meet the requirements of the CAA.

B. Do the Rules Meet the Evaluation Criteria?

We believe these rules are consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations. The TSD has more information on our evaluation.

C. Public Comment and Final Action

Because EPA believes the submitted rules fulfill all relevant requirements, we are proposing to fully approve them as described in section 110(k)(3) of the Act. We will accept comments from the public on this proposal for the next 30 days. Unless we receive convincing new information during the comment period, we intend to publish a final approval action that will incorporate these rules into the federally enforceable SIP.

IV. Statutory and Executive Order Reviews

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

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

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

Dated: May 11, 2004.

Laura Yoshii,

Deputy Regional Administrator, Region IX.

[FR Doc. 04–11559 Filed 5–20–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–1202, MM Docket No. 00–127, RM–9894]

Digital Television Broadcast Service; Jamestown, ND

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a Further Notice of Proposed Rule Making, seeking the substitution of DTV channel 18 for DTV channel 14 at Jamestown, North Dakota, proposed by Red River Broadcast Company, licensee of station KJRR–DT, DTV channel 14. DTV Channel 18 can be allotted to at reference coordinates 46–55–27 N. and 98–46–19 W., with a power of 1000, a height above average terrain HAAT of 135 meters. Since the community of Jamestown is located within 400 kilometers of the U.S.-Canadian border, concurrence from the government must be obtained for this allotment. This Further Notice does not afford an additional opportunity to file counterproposals in response to Red River's initial proposal to substitute DTV channel 30 for DTV channel 14, but only to Red River's new proposal to substitute DTV channel 18 at Jamestown.

DATES: Comments must be filed on or before June 28, 2004, and reply comments on or before July 13, 2004.

ADDRESSES: The Commission permits the electronic filing of all pleadings and comments in proceedings involving petitions for rule making (*except in broadcast allotment proceedings*). *See Electronic Filing of Documents in Rule Making Proceedings*, GC Docket No. 97–113 (rel. April 6, 1998). Filings by paper can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: David A. O'Connor, Holland & Knight LLP, 2099 Pennsylvania Avenue, NW., Suite 100, Washington, DC 20006–6801 (Counsel for Red River Broadcast Company).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–127, adopted April 29, 2004, and released May 7, 2004. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

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

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

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

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

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

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under North Dakota is amended by removing DTV channel 14 and adding DTV channel 18 at Jamestown.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 04–11542 Filed 5–20–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–1236; MB Docket No. 04–169; RM–10760]

Radio Broadcasting Services; El Indio, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rulemaking filed by Charles Crawford requesting the allotment of Channel 236A at El Indio, Texas. The coordinates for Channel 236A at El Indio are 28–30–22 and 100–18–03. There is a site restriction 1.3 kilometers (0.8 miles) southeast of the community. Since El Indio is located within 320 kilometers of U.S.-Mexican Border, concurrence of the Mexican Government will be requested for this allotment.

DATES: Comments must be filed on or before June 25, 2004, and reply comments on or before July 12, 2004.

ADDRESSES: Secretary, Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner as follows: Charles Crawford, 4553 Bordeaux Avenue, Dallas, Texas 75205 and Gene A. Bechtel, Law Offices of Gene Bechtel, 1050 17th Street, NW., Suite 600, Washington, DC 20036.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 04–169, adopted April 30, 2004, and released May 4, 2004. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, or via e-mail *qualexint@aol.com.*

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

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

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

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel El Indio, 236A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–11541 Filed 5–20–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–1237; MB Docket No. 04–170, RM–10766]

Radio Broadcasting Services; Rosebud, SD

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Rosebud Sioux Tribe proposing the allotment of Channel 257C at Rosebud, South Dakota, as the community's first local aural transmission service. Channel 257C can be allotted to Rosebud in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.2 kilometers (3.2 miles) east at petitioner's requested site. The coordinates for Channel 257C at Rosebud are 43–13–01 North Latitude and 100–47–33 West Longitude.

DATES: Comments must be filed on or before June 25, 2004 and reply comments on or before July 12, 2004.

ADDRESSES: Federal Communications Commission, Washington, DC 20054. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: William Kindle, Chairman, Rosebud Sioux Tribe, P.O. Box 430, Rosebud, South Dakota 57570 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 04–170, adopted June 25, 2004, and released July 12, 2004. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

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

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

List of Subjects for 47 CFR Part 73

Radio, Radio broadcasting.

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

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

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under South Dakota, is amended by adding, Rosebud, Channel 257C.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–11545 Filed 5–20–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–1238; MB Docket No. 04–168; RM–10832]

Radio Broadcasting Services; Waitsburg, WA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rulemaking filed by Waitsburg Broadcasting Company requesting the allotment of Channel 272A at Waitsburg, Washington. The coordinates for Channel 272A at Waitsburg are 46–17–41 and 117–59–47. There is a site restriction 12.3 kilometers (7.6 miles) east of the community. Canadian concurrence will be requested for the allotment of Channel 272A at Waitsburg.

DATES: Comments must be filed on or before June 25, 2004, and reply comments on or before July 12, 2004.

ADDRESSES: Secretary, Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner as follows: Thomas D. Hodgins, Waitsburg Broadcasting Company, 45 Campbell road, Walla Walla, Washington 99362.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 04–168, adopted April 30, 2004, and released May 4, 2004. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, or via e-mail *qualexint@aol.com.*

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

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

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

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Washington, is amended by adding Waitsburg, Channel 272A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–11546 Filed 5–20–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–1077; MB Docket No. 04–162, RM–10959]

Radio Broadcasting Services; Iowa Park and Quanah, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document sets forth a proposal to amend the FM Table of Allotments, §73.202(b) of the Commission's rules, 47 CFR 73.202(b). The Commission requests comment on a petition filed by KIXC–FM, L.L.C., licensee of Station KIXC–FM, Channel 265C3, Quanah, Texas. Petitioner proposes to delete Channel 265C3 at Quanah, Texas, to allot Channel 265C3 at Iowa Park, Texas, and to modify the license of Station KIXC–FM accordingly. Channel 265C3 can be allotted to Iowa Park in compliance with the Commission's minimum distance separation requirements with a site restriction of 15.3 km (9.5 miles) southwest of Iowa Park. The coordinates for Channel 265C3 at Iowa Park are 33–53–55 North Latitude and 98–49–16 West Longitude. *See* **SUPPLEMENTARY INFORMATION** *infra.*

DATES: Comments must be filed on or before June 18, 2004, and reply comments on or before July 5, 2004.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner as follows: Fred R. Morton, Manager, KIXC–FM, L.L.C., 67 Legend Lane, Houston, Texas 77024.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 04–162, adopted April 22, 2004 and released April 27, 2004. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893.

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

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

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 265C3 at Iowa Park and by removing Quanah, Channel 265C3.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–11547 Filed 5–20–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–1078; MB Docket No. 04–161; RM–10961]

Radio Broadcasting Services; Mount Sterling and Wilmington, OH

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Vernon R. Baldwin, Inc., licensee of Station WKLN(FM), Channel 272A, Wilmington, Ohio. The petition proposes to reallot Channel 272A, Station WKLN(FM), from Wilmington to Mount Sterling, Ohio, thus providing Mount Sterling with its first local aural transmission service. The coordinates for requested Channel 272A at Mount Sterling, Ohio, are 39–35–16 NL and 83–13–26 WL, with a site restriction of 15 kilometers (9.4 miles) south of Mount Sterling.

Petitioner's reallotment proposal complies with the provisions of Section 1.420(i) of the Commission's Rules, and therefore, the Commission will not accept competing expressions of interest in the use of Channel 272A at Mount Sterling, Ohio, or require the petitioner to demonstrate the availability of an additional equivalent class channel.

DATES: Comments must be filed on or before June 18, 2004, and reply comments on or before July 5, 2004.

ADDRESSES: Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Dennis F. Begley, Esq., Reddy, Begley & McCormick, LLP; 1156 15th Street, NW., Suite 610; Washington, DC 20005–1770.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 04–161, adopted April 22, 2004, and released April 27, 2004. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW., CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202-863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

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

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

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

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting

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

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Ohio, is amended by removing Wilmington, Channel 272A, and adding Mount Sterling, Channel 272A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division Media Bureau.

[FR Doc. 04–11548 Filed 5–20–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–1079; MM Docket No. 01–115; RM–10129; 10325]

Radio Broadcasting Services; Alpena, Au Gres, Beaverton, Cheboygan, Frankfort, and Standish, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: At the request of Au Gres Broadcasting Company, we dismiss its petition for rule making proposing the allotment of Channel 295A at Au Gres, Michigan, as the community's first local aural transmission service (RM–10129). See 66 FR 31597, June 12, 2001. As requested, we also dismiss the counterproposal of Fort Bend Broadcasting Company proposing the upgrade from Channel 257C2 to Channel 257C1 at Frankfort, Michigan, and the required channel substitutions to accommodate the upgrade (RM–10325). A showing of continuing interest is required before a channel will be allotted. It is the Commission's policy to refrain from making an allotment to a community absent an expression of interest.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–115, adopted April 22, 2004, and released April 27, 2004. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. This document is not subject to the Congressional Review Act.

Federal Communications Commission.
John A. Karousos,
Assistant Chief, Audio Division, Media Bureau.
[FR Doc. 04–11550 Filed 5–20–04; 8:45 am]
BILLING CODE 6712–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1852, 1853 and 1872

RIN 2700–AC88

Re-Issuance of NASA FAR Supplement Subchapters H and I

AGENCY: National Aeronautics and Space Administration.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the NASA FAR Supplement (NFS) by removing from the Code of Federal Regulations (CFR) those portions of the NFS containing information that consists of internal Agency administrative procedures and guidance that does not control the relationship between NASA and contractors or prospective contractors. This change is consistent with the guidance and policy regarding what comprises the Federal Acquisition Regulations System and requires publication for public comment. The NFS document will continue to contain both information requiring codification in the CFR and internal Agency guidance in a single document that is available on the Internet. This change will reduce the administrative burden and time associated with maintaining the NFS by only publishing in the **Federal Register** for codification in the CFR material that is subject to public comment.

DATES: Comments should be submitted on or before July 20, 2004, to be considered in formulation of the final rule.

ADDRESSES: Interested parties may submit comments, identified by RIN number 2700–AC88, via the Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments. Comments may also be submitted to Celeste Dalton, NASA, Office of Procurement, Contract Management Division (Code HK), Washington, DC 20546. Comments can also be submitted by e-mail to: *Celeste.M.Dalton@nasa.gov*.

FOR FURTHER INFORMATION CONTACT: Celeste Dalton, NASA, Office of Procurement, Contract Management Division (Code HK); (202) 358–1645; e-mail: *Celeste.M.Dalton@nasa.gov*.

SUPPLEMENTARY INFORMATION:

A. Background

Currently the NASA FAR Supplement (NFS) contains information to implement or supplement the FAR. This information contains NASA's policies, procedures, contract clauses, solicitation provisions, and forms that govern the contracting process or otherwise control the relationship between NASA and contractors or prospective contractors. The NFS also contains information that consists of internal Agency administrative procedures and guidance that does not control the relationship between NASA and contractors or prospective contractors. Regardless of the nature of the information, as a policy, NASA has submitted to the Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget (OMB) and published in the **Federal Register** all changes to the NFS. FAR 1.101 states in part that the "Federal Acquisition Regulations System consists of the Federal Acquisition Regulation (FAR), which is the primary document, and agency acquisition regulations that implement or supplement the FAR. The FAR System does not include internal agency guidance of the type described in 1.301(a)(2)." FAR 1.301(a)(2) states in part "an agency head may issue or authorize the issuance of internal agency guidance at any organizational level (e.g., designations and delegations of authority, assignments of responsibilities, work-flow procedures, and internal reporting requirements)." Further, FAR 1.303 states that issuance under FAR 1.301(a)(2) need not be published in the **Federal Register**. Based on the foregoing, NASA is not required to publish and codify internal Agency guidance.

This proposed rule will modify the existing practice by only publishing those regulations which may have a significant effect beyond the internal operating procedures of the Agency or have a significant cost or administrative impact on contractor or offerors.

The NFS will continue to integrate into a single document both regulations subject to puplic comments and internal Agency guidance and procedures that do not require public comment. Those portions of the NFS that require public comment will continue to be amended by publishing changes in the **Federal Register**. NFS regulations that require public comment are issued as Chapter 18 of Title 48, CFR. Changes to portions of the regulations contained in the CFR, along with changes to internal guidance and procedures, will be incorporated into the NASA-maintained Internet version of the NFS through Procurement Notices (PNs). The single official NASA-maintained version of the NFS will remain available on the Internet. NASA personnel must comply with all regulatory and internal guidance and procedures contained in the NFS.

This change will result in savings in terms of the number of rules subject to publication in the **Federal Register** and provide greater responsiveness to internal administrative changes.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities with the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601. *et seq.*, because this rule would only remove from the CFR information that is considered internal Agency administrative procedures and guidance. The information removed from the CFR will continue to be made available to the public via the Internet.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes do not impose recordkeeping or information collection requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR 1852, 1853, and 1872

Government procurement.

Tom Luedtke,
Assistant Administrator for Procurement.

Accordingly, 48 CFR Parts 1852, 1853, and 1872 are proposed to be amended as follows:

1. The authority citation for 48 CFR Parts 1852, 1853, and 1872 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Amend part 1852 by—

(a) Removing subpart 1852.1; and

(b) In the introductory text of section 1852.223–74, removing "1823.570–3;" and adding "1823.570–2" in its place.

PART 1853—FORMS

3. Remove and reserve Part 1853.

PART 1872—ACQUISITIONS OF INVESTIGATIONS

4. Remove and reserve Part 1872.

[FR Doc. 04–11457 Filed 5–20–04; 8:45 am]
BILLING CODE 7510–01–M

Notices

Federal Register
Vol. 69, No. 99
Friday, May 21, 2004

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. ST04–04]

Recordkeeping Requirements for Certified Applicators of Federally Restricted Use Pesticides; Section 610 Review

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Confirmation of regulations.

SUMMARY: This document summarizes results of an Agricultural Marketing Service (AMS) review of regulations pertaining to Recordkeeping Requirements for Certified Applicators of Federally Restricted Use Pesticides, which requires certified applicators to maintain records of restricted use pesticide applications, under the criteria contained in section 610 of the Regulatory Flexibility Act (RFA). Based on its review, AMS has determined that the regulations should be continued without change.

ADDRESSES: Interested persons may obtain a copy of the review. Request for copies should be sent to Pesticide Records Branch, Science and Technology, AMS, USDA, 8609 Sudley Road, Suite 203, Manassas, Virginia 20110–4582; Fax: (703) 330–6110 or e-mail: *amspesticide.records@usda.gov or www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Bonnie Poli, Pesticide Records Branch, AMS, USDA, 8609 Sudley Road, Suite 203, Manassas, Virginia 20110–4582; telephone (703) 330–7826; Fax: (703) 330–6110; or e-mail: *bonnie.poli@usda.gov*.

SUPPLEMENTARY INFORMATION: "Recordkeeping Requirements for Certified Applicators of Federally Restricted Use Pesticides", as amended (7 CFR part 110) require certified pesticide applicators to maintain records of federally restricted use pesticide applications for a period of 2 years. The regulations also provide for access to pesticide records by Federal or State designated agencies, or access to record information by licensed health care professionals when needed to treat an individual who may have been exposed to restricted use pesticides, and penalties for enforcement of the recordkeeping and access provisions. The regulations were implemented under the authority of the Food, Agriculture, Conservation, and Trade Act of 1990, (Pub. L. 101–624; 7 U.S.C. 136i–1).

AMS initially published in the **Federal Register** (February 18, 1999 (63 FR 8014)) its plan to review certain regulations, including the "Recordkeeping Requirements for Certified Applicators of Federally Restricted Use Pesticides", under criteria contained in section 610 of the Regulatory Flexibility Act (RFA; U.S.C. 601–612). An updated plan was published in the **Federal Register** on August 14, 2003 (68 FR 48574). Because many AMS regulations impact small entities, AMS has decided, as a matter of policy, to review certain regulations which, although they may not meet the threshold requirement under section 610 of the RFA, warrant review. AMS published a notice of review and request for written comments on the Recordkeeping Requirements for Certified Applicators of Federally Restricted Use Pesticides in the **Federal Register** May 2, 2003 (68 FR 23439). During the comment period, three written comments in support of the regulations were received. The comments were received from the National Cotton Council of America, National Corn Growers Association and the Michigan Department of Agriculture.

The AMS review was undertaken to determine whether the regulations, "Recordkeeping Requirements for Certified Applicators of Federally Restricted Use Pesticides", should be continued without change, amended, or rescinded to minimize the impacts on small entities. In conducting the review, AMS considered the following factors: (1) The continued need for the rule; (2) the nature of complaints or comments received from the public concerning the rule; (3) the complexity of the rule; (4) the extent to which the rule overlaps, duplicates, or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and (5) the length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

All three parties who commented stated that the current recordkeeping requirements were sufficient as written and the requirements of the regulations do not impose a burden that is too complex for the pesticide applicators to understand and follow. In addition, the Michigan Department of Agriculture stated, "the program continues to offer agricultural producers, workers and the department a flexible method by which pesticide application records can be maintained and accessed as needed."

The regulations were established to provide accurate data on the actual use of restricted use pesticides both in the agricultural and non-agricultural areas. Due to the requirement to maintain restricted use pesticide records, the National Agricultural Statistics Service (NASS) has been able to collect accurate information from agricultural producers through their voluntary surveys. NASS has stated that the data collected is more accurate due to applicators referring to actual records when surveyed. In today's atmosphere, where there are efforts to expand trade internationally and there is the need to monitor the food supply as part of homeland security, maintaining records on restricted use pesticides applied to agricultural products is important for producers.

Additionally, the regulations require access to restricted use pesticide records when needed for purposes of medical treatment. AMS reviewed the Worker Protection Standards (WPS) put into place by EPA in 1994 to determine if there was a duplication of requirements between the two regulations. WPS provides for the posting of application information for both restricted and general use pesticides for worker safety. WPS does not require the information be maintained past the period of time required for posting. In addition, the WPS covers only agricultural production which uses agricultural labor. Therefore, AMS determined that although similar to the Federal pesticide recordkeeping regulations, WPS does not replace the need for the regulations.

Based on its review, AMS has determined that the "Recordkeeping Requirements for Certified Applicators of Federally Restricted Use Pesticides' should be continued without change.

AMS did not receive any complaints or negative comments regarding the program or the regulations during the comment period of the Section 610 review. The regulations are not complex and AMS has provided flexibility to certified applicators on methods to maintain the pesticide application records. The program has not mandated any set form of recordkeeping system; therefore, certified applicators are free to select a recordkeeping system that suits their needs. AMS has supported educational outreach programs and has provided materials to the regulated community since early 1993 in order to boost compliance with the regulations. To reduce the burden on small entities, AMS has evaluated the current State pesticide regulatory programs to identify regulations requiring restricted use pesticide application records and determined if they are comparable to the Federal regulations. For those States that have comparable regulations, AMS deems the State recordkeeping requirements equivalent to the Federal regulations. This allows certified pesticide applicators to maintain the records under the State regulations and eliminates duplicate pesticide application record requirements.

AMS will continue to work with its State cooperators and the regulated communities to assure the intent of the Federal Pesticide Recordkeeping regulations are carried out with minimum burden on the entire regulated community.

Dated: May 17, 2004.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 04–11516 Filed 5–20–04; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 04–012–2]

Availability of Environmental Assessment and Finding of No Significant Impact for Field Test of Genetically Engineered Organism

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared relative to the issuance of a permit to allow the confined field testing of genetically engineered nonpathogenic (avirulent) strains of a bacterium, *Erwinia amylovora*, the causal agent of fire blight disease. The environmental assessment provides a basis for our conclusion that this field test will not present a risk of introducing or disseminating a plant pest and will not have a significant impact on the quality of the human environment. Based on its finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared for this field test.

DATES: *Effective Date:* May 11, 2004.

ADDRESSES: You may read the environmental assessment and finding of no significant impact and the comment received on an earlier notice of availability in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

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

FOR FURTHER INFORMATION CONTACT: Mr. John Cordts, BRS, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–5531. To obtain a copy of the environmental assessment and finding of no significant impact, contact Ms. Kay Peterson at (301) 734–4885; e-mail: *Kay.Peterson@aphis.usda.gov*. The environmental assessment and finding of no significant impact are also available on the Internet at *http://www.aphis.usda.gov/brs/aphisdocs/03_27901r_ea.pdf*.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered "regulated articles." A permit must be obtained or a notification acknowledged before a regulated article may be introduced into the United States. The regulations set forth the permit application requirements and the notification procedures for the importation, interstate movement, and release into the environment of a regulated article.

On October 6, 2003, the Animal and Plant Health Inspection Service (APHIS) received a permit application (APHIS No. 03–279–01r) from Oregon State University, Corvalis, OR, for a permit to field test avirulent strains 153 HrpS- and 153 HrpL- of the bacterial pathogen, *Erwinia amylovora*, the causal agent of fire blight disease, on apple and pear trees in Benton and Jackson Counties, OR.

APHIS published a notice in the **Federal Register** on March 22, 2004 (69 FR 13280–13281, Docket No. 04–012–1), announcing the availability for public comment of an environmental assessment (EA) for the proposed confined field test of genetically engineered avirulent strains of *Erwinia amylovora*. Comments were to have been received by APHIS on or before April 21, 2004. APHIS received one comment on the EA during the designated comment period. The comment, which was from a private individual, simply stated that the organism to be tested was worse than the nonengineered fire blight and that the engineered strains were not safe, without reference to any supporting data or information. APHIS evaluated the safety of the engineered avirulent strains of *Erwinia* in the EA, and we have responded to this comment in an attachment to the finding of no significant impact (FONSI), which is available as indicated under **FOR FURTHER INFORMATION CONTACT.** The avirulent strains of *E. amylovora* have been genetically engineered using the neomycin phosphotransferase (*nptII*) gene of transposon 10 from *Escherichia coli* strain DH5α and the *hrp* gene from *E. amylovora* strain Ea321. Insertion of the transposon within the coding region of the *E. amylovora hrp* gene results in inactivation of the gene and disruption of the disease-causing mechanism within the bacterium, thereby rendering the bacterium nonpathogenic or avirulent. Use of the *nptII* gene also confers resistance to the antibiotic kanamycin, which is used as a marker for the avirulent strains. The introduction of the avirulent strains, alone and in combination with other

nonpathogenic bacteria, is expected to protect susceptible plants from infection by wild type *E. amylovora*. The purpose of the field trial is to determine whether the avirulent Hrp-strains are effective as suppression agents of fire blight, one of the most destructive bacterial diseases of apple, pear, and other trees in the family *Rosaceae*.

The genetically engineered strains of *E. amylovora* are considered regulated articles under the regulations in 7 CFR part 340 because the recipient organism is a plant pathogen. The tests will be conducted in both screenhouse and field trials, and access to both sites is restricted by fences and/or chained gates. Data collection and monitoring on bacterial populations and incidence of disease will be conducted during the testing periods. Containment protocols have been designed to limit dispersal of the recombinant bacterium and are expected to provide the necessary degree of both biological and physical containment.

An EA was prepared to examine any potential environmental impacts and plant pest risk associated with the proposed field testing of the subject avirulent mutant strains of *E. amylovora*. Based on that EA, APHIS has reached a FONSI relative to issuance of a permit for the confined field testing of the subject strains of *Erwinia*. In summary, we have based our FONSI on the following conclusions: (1) The test bacterium, *Erwinia amylovora*, has been rendered incapable of causing disease; (2) virulent strains of this bacterium are indigenous to the area of the test; (3) dissemination of the bacteria will be prevented through physical methods, normal site security, the small size of the trials, and decontamination or appropriate disposal of application equipment; (4) the host range of the engineered bacteria has not changed; (5) the bacterium has never been associated with animal or human disease and will not therefore pose a health risk; (6) neomycin phosphotransferase from the marker gene does not confer any plant pest characteristics to *E. amylovora*; (7) native floral and faunal communities, including threatened and endangered species, are not in the host range of *E. amylovora* and therefore will not be affected by the trials.

The EA and FONSI were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Authority: 7 U.S.C. 1622n and 7701–7772; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 13th day of May, 2004.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–11530 Filed 5–20–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Deschutes and Ochoco National Forests Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Deschutes and Ochoco National Forests Resource Advisory Committee will meet in Redmond, Oregon. The purpose of the meeting is to review proposed projects and make recommendations under Title II of the Secure Rural Schools and Community Self-Determination Act of 2000.

DATES: The meeting will be held June 17 and 18, 2004 from 9 a.m. to 4:30 p.m.

ADDRESSES: The meeting will be held at the office of the Central Oregon Intergovernmental Council, 2363 SW. Glacier Place, Redmond, Oregon 97756. Send written comments to Leslie Weldon, Designated Federal Official for the Deschutes and Ochoco Resource Advisory Committee, c/o Forest Service, USDA, Deschutes National Forest, 1645 Highway 20 East, Bend, OR 97701 or electronically to *lweldon@fs.fed.us*.

FOR FURTHER INFORMATION CONTACT: Leslie Weldon, Designated Federal Official, Deschutes National Forest, 541–383–5512.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring Title II matters to the attention of the Committee may file written statements with the Committee staff before the meeting. A public input session will be provided and individuals who made written requests by June 11 will have the opportunity to address the Committee at the session.

Dated: May 14, 2004.

Leslie A.C. Weldon,

Deschutes National Forest Supervisor.

[FR Doc. 04–11533 Filed 5–20–04; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Addition and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed addition to and deletions from Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete products previously furnished by such agencies.

Comments Must Be Received On or Before: June 20, 2004.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Addition

If the Committee approves the proposed addition, the entities of the Federal Government identified in this notice for each product or service will be required to procure the service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. If approved, the action will result in authorizing small entities to furnish the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List. Comments on this certification are invited.

Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following service is proposed for addition to Procurement List for production by the nonprofit agencies listed:

Service

Service Type/Location: Mechanical Maintenance, Martin Luther King Federal Building & U.S. Courthouse, Newark, New Jersey, Paterson Federal Building, Paterson, New Jersey, Peter W. Rodino Federal Office Building, Newark, New Jersey, Veterans Administration Building, Newark, New Jersey.
NPA: Fedcap Rehabilitation Services, Inc., New York, New York.
Contract Activity: GSA, PBS—NJ Property Management Center, Newark, New Jersey.

Deletions

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action may result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action may result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products proposed for deletion from the Procurement List.

End of Certification

The following products are proposed for deletion from the Procurement List:

Products

Product/NSN: Pen, Pilot Explorer and Refills, 7510–01–425–5703 (Refill, Black), 7510–01–425–5716 (Refill, Blue), 7520–01–424–4862 (Pen).
NPA: San Antonio Lighthouse, San Antonio, Texas.
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.

Patrick Rowe,

Deputy Executive Director.

[FR Doc. 04–11525 Filed 5–20–04; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from Procurement List.

SUMMARY: This action adds to the Procurement List products to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List services previously furnished by such agencies.

EFFECTIVE DATE: June 20, 2004.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION:

Additions

On March 26, 2004, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (69 FR 15786) of proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and impact of the additions on the current or most recent contractors, the Committee has determined that the products listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products to the Government.

2. The action will result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products are added to the Procurement List:

Products

Product/NSN: Bakery Mix (Requirement for 100% of Operational Rations Only)
8920–00–926–6016 (Biscuit Mix)
8920–00–935–3262 (Chocolate Brownie Mix)
8920–00–823–7229 (Yellow Cake Mix)
8920–00–168–3296 (Chocolate Cookie Mix)
8920–00–435–4918 (Cornbread Mix)
8920–00–935–3264 (Oatmeal Cookie Mix)
8920–00–175–0429 (Sugar Cookie Mix)
8940–00–131–8761 (Vanilla Pudding Mix)
NPA: Advocacy and Resources Corporation, Cookeville, Tennessee.
Contract Activity: Defense Supply Center Philadelphia, Philadelphia, Pennsylvania.

Deletions

On March 26, 2004, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (69 FR 15786/15787) of proposed deletions to the Procurement List. After consideration of the relevant matter presented, the Committee has determined that the services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services deleted from the Procurement List.

End of Certification

Accordingly, the following services are deleted from the Procurement List:

Services

Service Type/Location: Commissary Shelf Stocking & Custodial, Fort Carson, Colorado.
NPA: None Currently Authorized.
Contract Activity: Defense Commissary Agency, Fort Lee, Virginia.
Service Type/Location: Commissary Shelf Stocking & Custodial, Fort Riley, Kansas.
NPA: None Currently Authorized.
Contract Activity: Defense Commissary Agency, Fort Lee, Virginia.

Service Type/Location: Commissary Shelf Stocking, Custodial & Warehousing, McConnell Air Force Base, Kansas.
NPA: None Currently Authorized.
Contract Activity: Defense Commissary Agency, Fort Lee, Virginia.
Service Type/Location: Janitorial/Grounds Maintenance, U.S. Army Reserve Center, Hot Springs, Arkansas.
NPA: None Currently Authorized.
Contract Activity: Department of the Army.

Patrick Rowe,

Deputy Executive Director.

[FR Doc. 04–11526 Filed 5–20–04; 8:45 am]

BILLING CODE 6353–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Massachusetts Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the Massachusetts Advisory Committee will convene at 1 p.m. and adjourn at 2 p.m., Wednesday, May 26, 2004. The purpose of the conference call is to update Advisory Committee members on planning status and finalize logistical issues for forum on educational issues in Lynn, Massachusetts.

This conference call is available to the public through the following call-in number: 1–800–955–9331, access code: 23836822. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the supplied call-in number or over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code number.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Aonghas St-Hilaire of the Eastern Regional Office, 202–376–7533 (TTY 202–376–8116), by 4 p.m. on Tuesday, May 25, 2004.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC , May 14, 2004.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 04–11468 Filed 5–20–04; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

Request for Duty-Free Entry of Scientific Instrument or Apparatus

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burdens, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 20, 2004.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th & Constitution Avenue, NW., Washington, DC 20230; phone(202) 482–0266 or via the Internet at *dHynek@doc.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to: Gerald Zerdy, U.S. Department of Commerce, FCB Suite 4100W, 14th Street & Constitution Avenue, NW., Washington, DC 20230; phone (202) 482–1660, fax (202) 482–0949.

SUPPLEMENTARY INFORMATION:

I. *Abstract:* The Departments of Commerce and Homeland Security ("DHS") are required to determine whether nonprofit institutions established for scientific or educational purposes are entitled to duty-free entry under the Florence Agreement of certain scientific instruments they import. Form ITA–338P enables: (1) DHS to determine whether the statutory eligibility requirements for the institution and the instrument are fulfilled, and (2) Commerce to make a comparison and finding as to the scientific equivalency of comparable instruments being manufactured in the United States. Without the collection of the information, DHS and Commerce would not have the necessary information to carry out the responsibilities of determining eligibility for duty-free entry assigned by law.

II. *Method of Collection:* The Department of Commerce distributes Form ITA–338P to potential applicants upon request. The applicant completes the form and then forwards it to the DHS. Upon acceptance by DHS as a valid application, the application is transmitted to Commerce for processing.

III. *Data:*

OMB Number: 0625–0037.

Form Number: ITA–338P.

Type of Review: Extension-Regular Submission.

Affected Public: State or local governments; Federal agencies; nonprofit institutions.

Estimated Number of Respondents: 60.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden Hours: 120.

Estimated Total Annual Cost: $152,640 ($2,640 for respondents and $150,000 for Federal government).

IV. *Request for Comments:* Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 18, 2004.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–11595 Filed 5–20–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–791–819]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Aluminum Plate From South Africa

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary determination of sales at less than fair value.

SUMMARY: The Department of Commerce ("the Department") preliminarily determines that certain aluminum plate from South Africa is being, or is likely to be, sold in the United States at less than fair value, as provided in section 733(b) of the Tariff Act of 1930, as amended ("the Act").

Interested parties are invited to comment on this preliminary determination. We will make our final determination not later than 75 days after the preliminary determination.

DATES: *Effective Date:* May 21, 2004.

FOR FURTHER INFORMATION CONTACT: Rebecca Trainor or Kate Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4007 or (202) 482–4929, respectively.

SUPPLEMENTARY INFORMATION:

Background

Since the initiation of this investigation (*Initiation of Antidumping Duty Investigation: Certain Aluminum Plate from South Africa*, 68 FR 64081 (November 12, 2003)) ("*Initiation Notice*"), the following events have occurred.

On December 1, 2003, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that imports of certain aluminum plate from South Africa are materially injuring the United States industry (*see* ITC Investigation No. 731–TA–1056 (Publication No. 3654)).

On December 5, 2003, we selected the largest producer/exporter of certain aluminum plate from South Africa as the mandatory respondent in this proceeding. For further discussion, see the December 5, 2003, Memorandum to Louis Apple, Director Office 2, from The Team Re: Selection of Respondent. Also on December 5, 2003, we issued the antidumping questionnaire to Hulett Aluminium (Pty) Limited ("Hulett").

During the period January through May 2004, the Department received responses to sections A through D of the Department's original and supplemental questionnaires from Hulett.[1]

On February 13, 2004, the petitioner made an allegation that Hulett sold certain aluminum plate in a third country market at prices below the cost of production (COP). On March 4, 2004, the Department initiated a cost investigation of Hulett's third country sales (see the March 4, 2004, Memorandum to the File Re: Petitioner's Allegation of Sales Below the Cost of Production for Hulett Aluminium (Pty) Limited).

On March 9, 2004, the Department extended the time limit for the preliminary results in this review until May 13, 2004. *See Notice of Postponement of Preliminary Determination of Sales at Less Than Fair Value: Certain Aluminum Plate from South Africa*, 69 FR 10980.

Scope of Investigation

The merchandise covered by this investigation is 6000 series aluminum alloy, flat surface, rolled plate, whether in coils or cut-to-length forms, that is rectangular in cross section with or without rounded corners and with a thickness of not less than .250 inches (6.3 millimeters). 6000 Series Aluminum Rolled Plate is defined by the Aluminum Association, Inc.

Excluded from the scope of this investigation are extruded aluminum products and tread plate.

The merchandise subject to this investigation is currently classifiable under subheading 7606.12.3030 of the *Harmonized Tariff Schedule of the United States* (HTS). Although the HTS subheading is provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation ("POI") is October 1, 2002, through September 30, 2003.

Fair Value Comparisons

To determine whether sales of certain aluminum plate from South Africa to the United States were made at less than fair value ("LTFV"), we compared the export price ("EP") to the normal value ("NV"), as described in the "Export Price" and "Normal Value" sections of this notice, below. In accordance with section 777A(d)(1)(A)(I) of the Act, we compared POI weighted-average EPs to weighted-average NVs.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced and sold by the respondent in the third country market during the POI that fit the description in the "Scope of Investigation" section of this notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the third country market, where appropriate.[2] Where there were no sales of identical merchandise in the third country market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order of importance: alloy, temper, gauge, width, and length.

Date of Sale

Section 351.401(i) of the Department's regulations states that the Department will normally use the date of invoice, as recorded in the exporter's or producer's records kept in the ordinary course of business, as the date of sale. However, the Department may use a date other than the date of invoice if the alternative better reflects the date on which the material terms of sale (*e.g.*, price and quantity) are established. On February 6, March 5, and March 22, 2004, the petitioner submitted letters to the Department arguing that the dates of either the framework agreement or the release order more accurately reflect the date on which the material terms of sale were established for the majority of the reported U.S. and third country sales transactions than does the invoice date. At the Department's request, Hulett submitted additional information on April 2, 2004. We found that this documentation, subject to verification, demonstrated that the quantity of aluminum plate ultimately sold changes significantly between the time the framework agreements and release orders are established and the time the commercial invoices are issued. Therefore, we have used the reported U.S. and third country invoice dates as the dates of sale for purposes of the preliminary determination.

Export Price

We used EP methodology, in accordance with section 772(a) of the Act, because the subject merchandise was sold directly by the producer/exporter in South Africa to the first unaffiliated purchaser in the United States prior to importation and constructed export price ("CEP") methodology was not otherwise indicated.

We based EP on the packed price to unaffiliated purchasers in the United States. In accordance with section 772(c)(2)(A) of the Act, we made

[1] The Section D supplemental response was filed on May 11, 2004, but not received in time to be used for purposes of the preliminary determination. Accordingly, for purposes of the preliminary determination, we used the original Section D questionnaire response dated April 30, 2004.

[2] See the discussion of home market viability in the "Normal Value" section of this notice.

deductions for movement expenses, including, where appropriate, foreign inland freight, warehousing, foreign brokerage and handling, international freight, and marine insurance. We added billing adjustments to EP, where appropriate.

Normal Value

A. Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared Hulett's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Because Hulett's aggregate volume of home market sales of the foreign like product was less than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was not viable for Hulett. However, we determined that the third country market of Taiwan was viable, in accordance with section 773(a)(1)(B)(ii) of the Act. Therefore, pursuant to section 773(a)(1)(C) of the Act, we have used third country sales as a basis for NV for Hulett.

B. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade ("LOT") as the EP or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). See 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *Id., see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (November 19, 1997) ("*Plate from South Africa*"). In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the "chain of distribution"), including selling functions, class of customer ("customer category"), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying levels of trade for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices [3]), we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. *See Micron Technology, Inc.* v. *United States*, 243 F. 3d 1301, 1314–1315 (Fed. Cir. 2001).

When the Department is unable to match U.S. sales to sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales to sales at a different LOT in the comparison market, where available data make it practicable, we examine whether a LOT adjustment is warranted under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if a NV LOT is more remote from the factory than the CEP LOT and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment was practicable), the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. *See Plate from South Africa*, 62 FR at 61731.

We obtained information from the respondents regarding the marketing stages involved in making the reported foreign market and U.S. sales, including a description of the selling activities performed for each channel of distribution.

In both the U.S. and Taiwan markets, Hulett sold the subject merchandise through one channel of distribution. In the U.S. market, Hulett sold to a long-standing customer which distributes Hulett's products in the United States. In Taiwan, Hulett similarly sold to a distributor, but employed a selling agent to assist with negotiation, translation and formalization of contracts, for which Hulett paid it a commission. Hulett also incurred certain marketing and technical support expenses associated with being a new entrant into the Taiwan market during the POI. Because of these differences in selling activities and associated selling expenses, we determined that U.S. and third country sales were made at two different LOTs. However, as there is only one LOT in the third country market, we have no basis on which to determine that a LOT adjustment is warranted pursuant to section 773(a)(7)(A) of the Act.

[3] Where NV is based on constructed value ("CV"), we determine the NV LOT based on the LOT of the sales from which we derive selling expenses and profit for CV, where possible.

C. Calculation of Normal Value

We calculated NV based on CIF or C&F prices to unaffiliated customers. We made deductions, where appropriate, from the starting price for movement expenses, including inland freight, warehousing, brokerage and handling, international freight, and marine insurance, under section 773(a)(6)(B)(ii) of the Act. In addition, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale for imputed credit, warranty, and advertising expenses. We also made an adjustment to NV to account for commissions paid in the third country but not in the U.S. market, in accordance with 19 CFR 351.410(e). As the offset for third country commissions, we applied the lesser of third country commissions or U.S. indirect selling expenses. We disallowed an adjustment claimed for certain technical services expenses because they appear to be indirect rather than direct selling expenses based on Hulett's description in its response. See the May 13, 2004, Memorandum to the File: Calculations for the Preliminary Determination of Certain Aluminum Plate from South Africa.

Furthermore, we made an adjustment for differences in costs attributable to differences in the physical characteristics of the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We also deducted third country packing costs and added U.S. packing costs in accordance with section 773(a)(6)(A) and (B) of the Act.

D. Cost of Production

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of Hulett's cost of materials and fabrication for the foreign like product, plus amounts for general and administrative expenses ("G&A"), and interest expenses, where appropriate. We relied on the COP information provided by Hulett in its questionnaire responses.

2. Test of Third Country Prices

On a product-specific basis, we compared the weighted-average COPs to third country sales of the foreign like product during the POI, as required under section 773(b) of the Act, in order to determine whether sales had been made at prices below the COP. The prices were exclusive of any applicable movement charges, commissions, direct and indirect selling expenses. In determining whether to disregard third

country sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which did not permit the recovery of costs within a reasonable period of time.

3. Results of the COP Test

Pursuant to section 773(b)(1) of the Act, where less than 20 percent of a respondent's sales of a given product are made at prices below the COP, we do not disregard any below-cost sales of that product because we determine that in such instances the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, we disregard those sales of that product, because we determine that in such instances the below-cost sales represent "substantial quantities" within an extended period of time in accordance with section 773(b)(1)(A) of the Act. In such cases, we also determine whether such sales are made at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(B) of the Act.

The results of our cost test for Hulett indicated that less than 20 percent of third country sales of any given product were at prices below COP. We therefore retained all sales in our analysis and used them as the basis for determining NV.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Decline of the U.S. Dollar Against the South African Rand

On April 9, 2004, the petitioner filed a letter with the Department requesting that we alter our normal calculation methodology to account for the significant decline of the U.S. dollar against the South African rand (SAR) over the course of the POI. The petitioner claimed that the combination of the following facts in this case may result in a distorted margin calculation when the Department's standard methodology is used: (1) Hulett's U.S. and third country prices were both denominated in dollars; (2) Hulett's costs were recorded in SAR; and (3) Hulett's third country prices remained relatively stable over the POI, rather than having been adjusted to take into account the decline in the value of the dollar. As a result of Hulett's failure to adjust its third country sales prices to take this decline into account, the petitioner contended that a disproportionate amount of Hulett's sales would be below cost toward the end of the POI. Consequently, the petitioner proposed three alternate methods for addressing this problem: (1) Disregard Taiwan as a comparison market based on a finding that sales to it are unrepresentative or based on "a particular market situation," and use CV as the basis for NV, (2) divide the POI into monthly segments for purposes of price and cost comparisons, or (3) adjust the prices using an index of the exchange rates applicable over the POI.

On April 22, 2004, Hulett submitted comments arguing that the petitioner's claims are without merit. Specifically, Hulett maintained that: (1) There is no basis for the Department to ignore its statutory mandate to use sales to a viable third country market as NV in this case; (2) the petitioner provides no evidence that prices to Taiwan or the United States differ significantly over the POI to justify employing a monthly comparison methodology; and (3) the proposed indexing methodology is inconsistent with the statute. Citing *Torrington Co.* v. *United States*, 832 F. Supp. 379, 392 (CIT 1993), Hulett concluded that the key issue in an antidumping proceeding is ascertaining differences between home market or third country prices and U.S. prices, rather than differences between the returns realized by the exporter on sales made in the two markets.

Our preliminary calculations show that no Taiwan sales need to be disregarded as a result of the cost test, and that no currency conversions for Taiwan sales prices for comparison to U.S. sales prices are necessary because they are already denominated in U.S. dollars. Therefore, we preliminarily find no basis for departing from our standard calculation methodology, as claimed by the petitioner.

Verification

As provided in section 782(i) of the Act, we will verify all information relied upon in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing U.S. Customs and Border Protection (CBP) to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated in the chart below. These suspension of liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
Hulett Aluminium (Pty.) Limited	4.33
All Others	4.33

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Disclosure

We will disclose the calculations used in our analysis to parties in this proceeding in accordance with 19 CFR 351.224(b).

Public Comment

Case briefs for this investigation must be submitted to the Department no later than seven days after the date of issuance of the sales and cost verification reports in this proceeding. Rebuttal briefs must be filed five days from the deadline date for 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. Section 774 of the Act provides that the Department 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 a request for a hearing is made in this investigation, the hearing will tentatively be held two days after the rebuttal brief deadline date at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written

request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

We will make our final determination no later than 75 days after the preliminary determination.

This determination is published pursuant to sections 733(f) and 777(i) of the Act.

Dated: May 13, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–11576 Filed 5–20–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–827]

Certain Cased Pencils From the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results and partial rescission of antidumping duty administrative review.

SUMMARY: On January 13, 2004, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results and rescission in part of the 2001–2002 administrative review of the antidumping duty order on certain cased pencils (pencils) from the People's Republic of China (PRC). The period of review (POR) is December 1, 2001, through November 30, 2002. We have now completed the 2001–2002 administrative review of the order. In our final results, based on our analysis of comments received, we amended the preliminary results of review. For details regarding these changes, see the section of this notice entitled "Changes Since the Preliminary Results." The final results are listed below in the "Final Results of Review" section.

DATES: *Effective Date:* May 21, 2004.

FOR FURTHER INFORMATION CONTACT: Paul Stolz, Christopher Zimpo, or Magd Zalok, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230; telephone (202) 482–4474, (202) 482–2747 and (202) 482–4162, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 13, 2004, the Department published in the **Federal Register** the preliminary results and rescission in part of the administrative review of the antidumping duty order on pencils from the PRC. *See Certain Cased Pencils from the People's Republic of China; Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review,* 69 FR 1965 (January 13, 2004) (*Preliminary Results*). We invited parties to comment on our Preliminary Results. On February 17, 2004, and February 23, 2004, we received case briefs and rebuttal briefs, respectively, from the petitioners,[1] China First Pencil Company, Ltd./Three Star Stationery Industry Corp. (CFP/Three Star), Orient International Holding Shanghai Foreign Trade Co., Ltd. (SFTC), and Shandong Rongxin Import & Export Company Ltd. (Rongxin) (formerly called Kaiyuan Group Corporation).

The Department has conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

Imports covered by this order are shipments of certain cased pencils of any shape or dimension (except as noted below) which are writing and/or drawing instruments that feature cores of graphite or other materials, encased in wood and/or man-made materials, whether or not decorated and whether or not tipped (*e.g.*, with erasers, etc.) in any fashion, and either sharpened or unsharpened. The pencils subject to the order are classified under subheading 9609.10.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Specifically excluded from the scope of the order are mechanical pencils, cosmetic pencils, pens, non-cased crayons (wax), pastels, charcoals, chalks, and pencils produced under U.S. patent number 6,217,242, from paper infused with scents by the means covered in the above-referenced patent, thereby having odors distinct from those that may emanate from pencils lacking the scent infusion. Also excluded from the scope of the order are pencils with all of the following physical characteristics: (1) Length: 13.5 or more inches; (2) sheath diameter: not less than one-and-one quarter inches at any point (before sharpening); and (3) core length: not more than 15 percent of the length of the pencil.

Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

Partial Rescission

The Department preliminarily rescinded this review with respect to Tianjin Custom Wood Processing Co., Ltd. (TCW) because TCW reported that it did not export subject merchandise to the United States during the POR. *See* the *Preliminary Results*; see also; TCW's February 21, 2003, response to the Department's questionnaire. TCW's claim that it did not export subject merchandise during the POR is supported by U.S. Customs and Border Protection (CBP) data. Moreover, there is no evidence on the record of this segment of the proceeding indicating that TCW exported subject merchandise during the POR. Therefore, we are rescinding this review with respect to TCW.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the "Issues and Decision Memorandum" (*Decision Memorandum*) from Holly A. Kuga, Acting Deputy Assistant Secretary for Import Administration, to James J. Jochum, Assistant Secretary for Import Administration, dated May 12, 2004, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the *Decision Memorandum*, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Record Unit, room B–099 of the main Department of Commerce building. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the International Trade Administration's Web site at *www.ia.ita.doc.gov*. The paper copy and the electronic version of the *Decision Memorandum* are identical in content.

Changes Since the Preliminary Results

Based on our analysis of the comments received and the results of verification, we adjusted certain factors of production information that we used

[1] The petitioners are Sanford LLP, Musgrave Pencil Company, Rose-Moon Inc., and General Pencil Company.

to calculate dumping margins in the preliminary results of review, and corrected certain programming and ministerial errors in our preliminary results. These changes are listed below.

All Respondents

We corrected the pencil slat dimensions used to calculate the surrogate value for pencil slats. We also corrected language in the margin calculation programs which incorrectly multiplied reported plant-to-port distances by 1.4. Additionally, we used the current surrogate labor rate in, and excluded unreliable surrogate data for cores from, our calculation.

CFP/Three Star

We corrected the plant-to-port-distance used to calculate the surrogate value for inland freight for CFP and Three Star. In addition, we corrected certain ministerial errors in CFP/Three Star's margin calculation program relating to control numbers. *See* the CFP/Three Star Margin Calculation Analysis memorandum for a list of changes based on verification findings. In addition, we excluded certain CFP/Three Star U.S. sales from our margin calculation.

Final Results of Review

We determine that the following weighted-average, ad valorem, percentage margins exist for the period December 1, 2001 through November 30, 2002:

Exporter/manufacturer	Margin (percent)
CFP/Three Star	15.20
SFTC	10.96
Rongxin	27.87
PRC Wide-Rate	114.90

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of pencils from the PRC entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be the rates shown above; (2) for previously reviewed or investigated 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 will be 114.90 percent; and (4) the cash deposit rate for non-PRC exporters will be the rate applicable to the PRC supplier of that exporter.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Assessment

The Department will determine, and CBP will assess, antidumping duties on all entries of subject merchandise in accordance with these final results of review. For the companies subject to this review, we calculated exporter-specific assessment rates because there is no information on the record which identifies the importers of record. Specifically, for CFP/Three Star, SFTC and Rongxin, we calculated duty assessment rates for subject merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total quantity of those sales. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of these final results of review.

Reimbursement of Duties

This notice also serves as a final 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 doubled antidumping duties.

Administrative Protective Orders

This notice also serves as the only reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the return or destruction of proprietary information disclosed under an APO in accordance with 19 CFR 351.305. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 771(i) of the Act.

Dated: May 12, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

Appendix—Issues in Decision Memorandum

Comments

Comment 1: The Appropriate Surrogate Value for Pencil Cores
Comment 2: Whether China First Pencil Co. Ltd. (CFP)/Three Star Stationery Industry Corp. (Three Star) Reported U.S. Sales Made by Another PRC Entity
Comment 3: The Appropriate Surrogate Source For Financial Ratios
Comment 4: Ministerial Errors
Comment 5: Whether Three Star Reimbursed Certain U.S. Customers for Dumping Duties
Comment 6: Whether the Department Should Continue to Treat CFP and Three Star as a Single Entity for Antidumping Duty Purposes
Comment 7: How to Treat Certain Sales With Two Sales Invoices
Comment 8: Whether CFP's Dumping Margin Applies to its Subsidiaries

[FR Doc. 04–11575 Filed 5–20–04; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–848]

Freshwater Crawfish Tail Meat From the People's Republic of China: Notice of Rescission, in Part, of Antidumping Duty Administrative Review for the Period September 1, 2002 Through August 31, 2003

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: In response to timely requests from interested parties, the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China (PRC), covering the period of September 1, 2002 through August 31, 2003. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 68 FR 60910 (October 24, 2003). Because the Crawfish Processors Alliance and its members (together with the Louisiana Department of Agriculture & Forestry and Bob Odom, Commissioner), and the Domestic Parties (collectively, the Domestic Interested Parties), have withdrawn their request for an administrative review of certain companies, and because one respondent, North Supreme Seafood, withdrew its own request for review, the Department is rescinding, in part, this review of freshwater crawfish tail meat

from the PRC, in accordance with section 351.213(d)(1) of the Department's regulations.

DATES: *Effective Date:* May 21, 2004.

FOR FURTHER INFORMATION CONTACT: Matthew Renkey or Maureen Flannery, Office of AD/CVD Enforcement VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 482–2312 or (202) 482–3020, respectively.

SUPPLEMENTARY INFORMATION:

Background

Based on timely requests from the Domestic Interested Parties, and from exporters Hubei Qiangjiang Houhu Cold & Processing Factory, North Supreme Seafood, Qingdao Jinyongxiang Aquatic Foods Co., Ltd., and Shouzhou Huaxiang Foodstuffs Co., Ltd., the Department initiated the administrative review of the antidumping duty order on freshwater crawfish tail meat from PRC. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 68 FR 60910 (October 24, 2003) *(Initiation Notice).* The following companies were included in the *Initiation Notice:*

China Everbright
China Kingdom Import & Export Co., Ltd.
aka China Kingdoma Import & Export Co., Ltd.
aka Zhongda Import & Export Co., Ltd.
Fujian Pelagic Fishery Group Co.
Huaiyin Foreign Trade Corporation (5)
Jiangsu Hilong International Trading Co., Ltd.
Huaiyin Foreign Trade Corporation (30)
Jiangsu Cereals, Oils, & Foodstuffs Import & Export Corp.
Hubei Qiangjiang Houhu Cold & Processing Factory
Nantong Delu Aquatic Food Co. Ltd.
Nantong Shengfa Frozen Food Co., Ltd.
Ningbo Nanlian Frozen Foods Co., Ltd.
North Supreme Seafood
Qingdao Jinyongxiang Aquatic Foods Co., Ltd.
Qingdao Rirong Foodstuff Co., Ltd.
aka Qingdao Rirong Foodstuffs
Qingdao Xiyuan Refrigerated Food Co., Ltd.
Qingdao Zhengri Seafood Co., Ltd.
aka Qingdao Zhengri Seafoods
Shanghai Ocean Flavor International Trading Co., Ltd.
Shanghai Taoen International Trading Co., Ltd.
Shanghai Yangfen International Trading Co., Ltd.
Shouzhou Huaxiang Foodstuffs Co., Ltd.
Suqian Foreign Trade Corp.
aka Suqian Foreign Trading
Weishan Fukang Foodstuffs Co., Ltd.
Weishan Zhenyu Foodstuff Co., Ltd.
Yancheng Baolong Biochemical Products Co., Ltd.
Yancheng Foreign Trade Corp.
aka Yancheng Foreign Trading
aka Yang Chen Foreign Trading
Yancheng Fuda Foods Co., Ltd.
Yancheng Haiteng Aquatic Products & Foods Co., Ltd.
Yancheng Yaou Seafoods
Yangzhou Lakebest Foods Co., Ltd.
Zhoushan Huading Seafood Co., Ltd.

On January 26, 2004, the Domestic Interested Parties submitted a timely letter withdrawing, in part, their request for a review with respect to the following exporters:

China Everbright
China Kingdom Import & Export Co., Ltd.
aka China Kingdoma Import & Export Co., Ltd.
aka Zhongda Import & Export Co., Ltd.
Fujian Pelagic Fishery Group Co.
Huaiyin Foreign Trade Corporation (5)
Jiangsu Hilong International Trading Co., Ltd.
Huaiyin Foreign Trade Corporation (30)
Jiangsu Cereals, Oils, & Foodstuffs Import & Export Corp.
Nantong Delu Aquatic Food Co. Ltd.
Ningbo Nanlian Frozen Foods Co., Ltd.
Qingdao Rirong Foodstuff Co., Ltd.
aka Qingdao Rirong Foodstuffs
Qingdao Xiyuan Refrigerated Food Co., Ltd.
Qingdao Zhengri Seafood Co., Ltd.
aka Qingdao Zhengri Seafoods
Shanghai Taoen International Trading Co., Ltd.
Shanghai Yangfen International Trading Co., Ltd.
Shouzhou Huaxiang Foodstuffs Co., Ltd.
Suqian Foreign Trade Corp.
aka Suqian Foreign Trading
Weishan Fukang Foodstuffs Co., Ltd.
Weishan Zhenyu Foodstuff Co., Ltd.
Yancheng Baolong Biochemical Products Co., Ltd.
Yancheng Foreign Trade Corp.
aka Yancheng Foreign Trading
aka Yang Chen Foreign Trading
Yancheng Fuda Foods Co., Ltd.
Yancheng Haiteng Aquatic Products & Foods Co., Ltd.
Yancheng Yaou Seafoods
Yangzhou Lakebest Foods Co., Ltd.
Zhoushan Huading Seafood Co., Ltd.

On March 16, 2004, North Supreme Seafood withdrew its own request for review.

Rescission, in Part, of the Administrative Review

Pursuant to the Department's regulations, the Department will rescind an administrative review "if a party that requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review." *See* 19 CFR 351.213(d)(1). The Department may also extend this time limit if it decides that it is reasonable to do so. *Id.*

The Domestic Interested Parties filed a timely withdrawal of their requests for review of the companies named above. However, respondent Shouzhou Huaxiang Foodstuffs Co., Ltd. requested a review of its own sales. Therefore, the Department is rescinding its antidumping administrative review with respect to the companies listed above, except for Shouzhou Huaxiang Foodstuffs Co., Ltd., in accordance with section 351.213(d)(1) of the Department's regulations.

While North Supreme Seafood's withdrawal of its own request for review was not timely, according to section 351.213(d)(1) of the Department's regulations, the Department may extend this time limit if it decides that it is reasonable to do so. In this case, the Department has determined that rescinding the review is appropriate. Continuing this review would only require North Supreme Seafood, the Domestic Interested Parties and the Department to expend time and resources on a review in which the only parties that requested the review are no longer interested. The Department has not released supplemental questionnaires with respect to North Supreme Seafood, nor conducted verification. Therefore, the Department does not believe the administrative review has proceeded to a point at which it would be "unreasonable" to rescind the review. Furthermore, there are no overarching policy issues that would warrant continuing with this review. The Department has therefore determined that it is reasonable to extend the 90-day time limit, and is rescinding its antidumping administrative review with respect to North Supreme Seafood in accordance with § 351.213(d)(1) of the Department's regulations. The Department will issue appropriate assessment instructions to U.S. Customs for all of these companies within 15 days of publication of this notice.

Based on these rescissions, the administrative review of the antidumping duty order on freshwater crawfish tail meat from the PRC, for the period of September 1, 2002 through August 31, 2003, now covers Qingdao Jinyongxiang Aquatic Foods Co., Ltd., Shouzhou Huaxiang Foodstuffs Co., Ltd., Hubei Qiangjiang Houhu Cold & Processing Factory, Nantong Shengfa

Frozen Food Co., Ltd., and Shanghai Ocean Flavor International Trading Co., Ltd.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written 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 sanctionable violation.

This determination and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(d)(4).

Dated: May 13, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–11573 Filed 5–20–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–851]

Live Swine From Canada: Postponement of Preliminary Countervailing Duty Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce is postponing the preliminary determination in the countervailing duty investigation of live swine from Canada from June 11, 2004 until no later than August 16, 2004. This extension is made pursuant to section 703(c)(1)(B) of the Tariff Act of 1930, as amended.

EFFECTIVE DATE: May 21, 2004.

FOR FURTHER INFORMATION CONTACT: Melani Miller or S. Anthony Grasso, at (202) 482–0116 or (202) 482–3853, respectively, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Postponement of Due Date for Preliminary Determination

On April 7, 2004, the Department of Commerce ("the Department") initiated the countervailing duty investigation of live swine from Canada. *See Notice of Initiation of Countervailing Duty Investigation: Live Swine From Canada,* 69 FR 19818 (April 14, 2004). Currently, the preliminary determination is due no later than June 11, 2004. However, pursuant to section 703(c)(1)(B) of the Tariff Act of 1930, as amended ("the Act"), we have determined that this investigation is "extraordinarily complicated" and are therefore extending the due date for the preliminary determination by 65 days to no later than August 16, 2004.

Under section 703(c)(1)(B) of the Act, the Department can extend the period for reaching a preliminary determination until not later than the 130th day after the date on which the administering authority initiates an investigation if

(B) the administering authority concludes that the parties concerned are cooperating and determines that

(i) the case is extraordinarily complicated by reason of

(I) the number and complexity of the alleged countervailable subsidy practices;

(II) the novelty of the issues presented;

(III) the need to determine the extent to which particular countervailable subsidies are used by individual manufacturers, producers, and exporters; or

(IV) the number of firms whose activities must be investigated; and

(ii) additional time is necessary to make the preliminary determination.

We find that in this investigation all concerned parties are cooperating. Nevertheless, we have determined that an extension of the deadline for the preliminary determination is necessary due to the extraordinarily complicated nature of the case. The programs in this investigation raise a number of potentially complex issues, *e.g.*, the Government of Canada has filed several "green box" claims. Finally, because of the delay in issuing the questionnaires due to the complex issues surrounding respondent selection, the Department will not have sufficient time to review and analyze the questionnaire responses once they are received and to issue supplemental questionnaires if necessary without an extension of the original time limit.

Accordingly, we deem this investigation to be extraordinarily complicated, and we determine that additional time is necessary to make the preliminary determination. Therefore, pursuant to section 703(c)(1)(B) of the Act, we are postponing the preliminary determination in this investigation to not later than August 16, 2004.

This notice is published pursuant to section 703(c)(2) of the Act.

Dated: May 14, 2004.

Jeffrey May,

Acting Assistant Secretary for Import Administration.

[FR Doc. 04–11574 Filed 5–20–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 051004F]

North Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The North Pacific Fishery Management Council (Council) and its advisory committees will hold public meetings in June.

DATES: The meeting will be held on Monday, June 7, 2004 through Tuesday, June 15, 2004. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Benson Hotel, 309 Southwest Broadway, Portland, OR 97205.

Council address: North Pacific Fishery Management Council, 605 W. 4th Avenue, Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Council staff; telephone: 907–271–2809.

SUPPLEMENTARY INFORMATION: The Council's Advisory Panel will begin at 8 a.m., Monday, June 7, and continue through Saturday, June 12, 2004. The Scientific and Statistical Committee will begin at 8 a.m. on Monday, June 7, and continue through Wednesday, June 9, 2004.

The Council will begin its plenary session at 8 a.m. on Wednesday, June 9 continuing through Tuesday, June 15. All meetings are open to the public except executive sessions. The Enforcement Committee will meet Tuesday, June 8 from 1 pm to 5 pm, Parliament Room 3 & 4.

Council Plenary Session: The agenda for the Council's plenary session will include the following issues. The Council may take appropriate action on any of the issues identified.

1. Reports
   a. Executive Director's Report
   b. NMFS Management Report
   c. Enforcement Report
   d. Coast Guard Report
   e. Alaska Department of Fish and Game Report

f. U.S. Fish and Wildlife Service Report
2. Bering Sea/Aleutian Island (BSAI) Crab Rationalization Environmental Impact Statement (EIS): Final Action on Crab Rationalization EIS.
3. Draft Programmatic Groundfish Supplemental Environmental Impact Statement (DPSEIS): Develop timeline for management policy/action as necessary. Initial/Final Review of Groundfish Fishery Management Plans (FMP) Revisions.
4. Essential Fish Habitat (EFH) and Habitat Area Particular Concern (HAPC): Finalize HAPC alternatives for analysis. Review comments on EFH EIS, and take action as necessary.
5. Aleutian Island Pollock: Final action to establish Adak pollock allocation.
6. Gulf of Alaska (GOA) Rockfish Pilot Program: Discuss alternatives and options for analysis/action as necessary.
7. Improved Retention/Improved Utilization (IR/IU): Receive progress report on Amendment 80 and discussion papers/action as necessary.
8. Observer Program (T): Receive update on analysis/action as necessary.
9. Community Development Quota (CDQ) Program: Initial Review of analysis on fishery management issues/ other action as necessary.
10. Steller Sea Lion (SSL) Mitigation Measures: Initial Review and final to adjust measures in GOA.
11. Scallop FMP: Initial Review of analysis to modify the license limitation program and update the FMP/action as necessary.
12. Groundfish FMP: Receive report from Non-Target Species Committee/ action as necessary.
13. Staff Tasking: Review tasking and provide direction to staff/action as necessary.
14. Other Business: National Standard 1 - review/comment on proposed rule. Crab overfishing definition/plan team report/action as necessary. Salmon Experimental Permit - receive report/ action as necessary. SSL/Pacific cod interaction study - receive report/action as necessary. Seabird EFP - receive report/action as necessary. (T)

Scientific and Statistical Committee (SSC): The SSC agenda will include the following issues:
1. DPSEIS
2. EFH and HAPC
3. Aleutian Island Pollock
4. CDQ Program
5. SSL Mitgation Measures
6. Scallop FMP
7. Crab Overfishing Definition
8. Salmon Experimental Fishing Permit
9. National Standard One
10. SSL/Pacific Cod Interaction Report
11. Seabird EFP

Advisory Panel: The Advisory Panel will address the same agenda issues as the Council.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified 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 Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at 907–271–2809 at least 7 working days prior to the meeting date.

Dated: May 18, 2004.

Matteo J. Milazzo,

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

[FR Doc. 04–11583 Filed 5–20–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 051204B]

Western Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings and hearings.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold its 123rd meeting to consider and take actions on fishery management issues in the Western Pacific Region. Meetings of the Council's Scientific and Statistical Committee (SSC) and Advisory Panels (AP) will also be held.

DATES: The 86th SSC meeting will be held on June 8 - 10, 2004. The AP meetings and the 123rd Council meeting and public hearings will be held on June 21–24, 2004. For specific times, see **SUPPLEMENTARY INFORMATION.**

ADDRESSES: The 86th SSC meeting will be held at the Western Pacific Fishery Council Conference room, 1164 Bishop Street, Suite 1400, Honolulu, HI. The Advisory Panel (AP) meetings and 123rd Council meeting and public hearings will be held at the Ala Moana Hotel, 410 Atkinson Drive, Honolulu, HI; telephone:808–955–4811.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: (808)522–8220.

SUPPLEMENTARY INFORMATION: In addition to the agenda items listed below, the SSC, AP, and Council will hear recommendations from other Council advisory groups. Public comment periods will be provided throughout the agenda. The order in which agenda items are addressed may change. The SSC, AP and Council will meet as late as necessary to complete scheduled business.

Schedule and Agenda for SSC

9 a.m. Tuesday, June 8, 2004
1. Introductions
2. Approval of draft agenda and assignment of rapporteurs
3. Approval of the minutes of the 85th meeting
4. Ocean Commissions Report
5. Pelagic fisheries
A. American Samoa and Hawaii longline fisheries
a. Quarterly reports
B. Update on turtle management
C. Seabird measures
a. Update on seabird measures
b. U.S. Fish and Wildlife Service (USFWS) Shorttail Albatross Biological Opinion (BIOP)
D. Shark management
a. Alternatives for shark management
b. Shark viewing and feeding tours
E. Pelagic squid management
F. National standard 1 revisions
G. Pelagics stock assessment research and review
H. Options for yellowfin and bigeye management in the Pacific
I. International meetings
a. Prepatory Conference VI-Bali, Indonesia
b. Indian Ocean Southeast Asian Sea Turtle Memorandum of Understanding Meeting-Bangkok, Thailand
c. 17th Scientific Committee on Tuna and Billfish
d. International Symposium on Ecosystem Indicators
6. Protected species
A. Sea turtles
a. Second Cooperative Research and Management Workshop
b. Baja meeting
c. 24th Sea Turtle Symposium
d. Sea turtle models
e. Transferred effects
B. Marine mammals

8:30 a.m. Wednesday, June 9, 2004
7. Ecosystem and habitat
A. Archipelagic fishery ecosystem plans

B. Update on annual report development
8. Bottomfish
A. Commonwealth of the Northern Mariana Islands (CNMI) bottomfish management
9. Crustaceans fisheries (Northwestern Hawaiian Islands (NWHI) lobsters)
A. Update on MULTIFAN-CL lobster model
B. 2004 NWHI cruise and charter plans
C. MHI Lobster stock assessment
D. Update on annual report development
8:30 a.m. Thursday, June 10, 2004
10. Precious corals
A. Current precious coral research
B. Update on annual report development
11. Other business
A. Stock assessment planning
B. 87th SSC meeting
12. Summary of SSC recommendations to the Council
APs

The Commercial, Recreational, Subsistence/Indigenous and Ecosystem and Habitat sub-panels will meet jointly on Monday, June 21, 2004, from 8 a.m. to 12 noon. Panels will meet individually on Monday, June 21, 2004, from 1 p.m. to 6 p.m. Panels will meet in a plenary session from 8 a.m. to 12 noon on Tuesday, June 22, 2004, to summarize and review recommendations. The agenda for the APs meetings will include the items listed below. Public comment periods will be provided throughout the agenda. The order in which agenda items are addressed may change. The APs will meet as late as necessary to complete scheduled business.

8 a.m. Monday, June 21, 2004
Plenary Session
1. Welcome and general housekeeping remarks
2. Overview of pelagic/international management actions
3. Overview of bottomfish management actions
4. Overview of coral reef ecosystems management actions
5. Overview of precious coral and crustacean management actions
6. Overview of indigenous issues
7. Program planning items
A. Archipelagic fishery ecosystem plans
B. 3 year program plan
1 p.m.–6 p.m. Monday, June 21, 2004

Commercial, recreational, subsistence/indigenous and ecosystem/habitat panels will meet separately to discuss the following items:
1. CNMI bottomfish management
2. Pelagic management measures
A. Sea turtles
B. Seabirds
C. Electronic logbooks
D. Squid
3. 2003 Pelagics Annual Report
4. Recreational data
A. NMFS Recreational Fisheries Strategic Plan
B. Guam Voluntary Community Monitoring Program
C. Recreational licenses and reporting
5. Status of NWHI sanctuary designation process
6. Archipelagic fishery ecosystem plans
7. Community Demonstration Project Program
A. Status of first solicitation
B. Status of second solicitation
8. Coral Reef Ecosystems Fishery Management Plan
A. Summary of FMP measures
B. Annual report
9. Overview of Coral Reef Fish Stock Assessment Workshop and recommendations
10. Status of NWHI Sanctuary designation process
11. Main Hawaiian Islands (MHI) lobster assessment
8 a.m.–12 noon, Tuesday, June 22
Plenary session
1. Review and discussion of sub-panels' recommendations
A. Commercial panel
B. Recreational panel
C. Subsistence panel
D. Ecosystem panel
2. Other business

Schedule and Agenda for Council Standing Committee Meetings

Monday, June 21, 2004

1. 2 p.m.–4 p.m. Executive/Budget &Program Standing Committee

Tuesday, June 22, 2004

1. 8 a.m.–10 a.m. Enforcement/vessel monitoring system (VMS) Standing Committee

2. 8 a.m.–10 a.m. Ecosystem & Habitat Standing Committee

Schedule and Agenda for Public Hearings

Tuesday, June 22, 2004

1 p.m.–6 p.m. Proposed regulatory amendment (final action) under all five western Pacific fishery management plans that would allow fishermen the option of using NMFS approved electronic logbooks instead of paper logbooks, the option of submitting the electronic logbook via non-paper media (i.e. diskette, CD, memory stick, etc.) and the option of transmitting the electronic logbook information via e-mail or satellite transmission.

Wednesday June 23, 2004

5:30 p.m. Final action on a regulatory amendment to establish additional measures to conserve sea turtles and initial action on a regulatory amendment under the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (Pelagics FMP) to revise the requirements for seabird mitigation when fishing north of 23° N' lat. to include side setting of longline gear as an alternative to one or more of the current suite of seabird mitigation measures.

Thursday, June 24, 2004

9 a.m. Preliminary options to manage the bottomfish fishery around the CNMI. The agenda during the full Council meeting will include the items listed here.

For more information on public hearing items, see Background Information later in this document.

Schedule and Agenda for Council Meeting

1 p.m.–6 p.m. Tuesday, June 22, 2004
1. Introductions
2. Approval of agenda
3. Approval of 122nd meeting minutes
4. Island reports
A. American Samoa
B. Guam
C. Hawaii
D. CNMI
5. Reports from fishery agencies and organizations
A. Department of Commerce
a. NMFS
i. Pacific Islands Regional Office
ii. Pacific Islands Fisheries Science Center
b. National Marine Sanctuary Program
i. Pacific Sanctuaries update
ii. HI Humpback Whale National Marine Sanctuary update
c. NOAA General Counsel SWR
B. Department of Interior–USFWS
C. State Department
D. Ocean Commission Report
E. Report from Non-governmental organizations
6. Enforcement/VMS
A. USCG activities
B. NMFS activities
C. Enforcement activities of local agencies
D. Status of violations
E. Electronic logbooks regulatory amendment (final action)
8 a.m.–6 p.m. Wednesday, June 23, 2004
7. Observer programs
A. Report on the NWHI bottomfish observer program
B. Report on the native observer program
C. Report on the Hawaii longline observer program
8. Precious corals fisheries
A. Current precious coral research
B. Update on annual report development
C. 2004 Plan team report and recommendations
9. Pelagic fisheries
A. American Samoa & Hawaii longline fisheries

a. Quarterly reports
b. Options for yellowfin and bigeye management in the Pacific
c. New paperwork requirements for imports & exports
B. Seabird measures
a. Update on seabird measures
b. USFWS, shorttail albatross BiOp
c. Revision to seabird mitigation measures (initial action)
C. Sea turtles
a. Update on current sea turtle measures
i. Review of final rule published April 2, 2004
ii. Update on implementation of final rule
iii. Potential changes in implementation for 2005
b. Additional Measures for sea turtles (final action)
c. Second Cooperative Research and Management Workshop
d. Baja meeting
e. Sea turtle models
f. Transferred market effects
g. Hawaiian green turtle recovery
D. Marine mammals
a. Marine mammal workshop
b. Update on new marine mammal measures
E. Shark management
a. Alternatives for shark management
b. Shark viewing and feeding tours
F. Pelagic squid management (initial action)
G. International meetings
a. PrepCon VI–Bali, Indonesia
b. IOSEA Meeting–Bangkok, Thailand
c. Inter-American Tropical Tuna Commission meeting–Lima, Peru
8 a.m. 12 noon Thursday, June 24, 2004
10. Bottomfish fisheries
A. CNMI bottomfish management measures (initial action)
B. 2004 Plan Team report and recommendations
C. SSC recommendations
11. Crustaceans fisheries
A. Update on MULTIFAN-CL lobster model
B. 2004 NWHI cruise and charter plans
C. (MHI) lobster stock assessment
D. Update on annual report development
12. Ecosystems and habitat
A. Archipelagic fishery ecosystem plans
B. Ulua tagging program
C Update on annual report development
13. Fishery rights of indigenous peoples
A. Community Demonstration Projects Program (2nd Solicitation)
B. Update on Guam Community Development Plan
C. CNMI Conservation Plan (final action)
D.Workshop for Coastal Zone Management-Fiji
1:30 p.m.– 6 p.m., Thursday, June 24, 2004
14. Program planning
A Chair and Executive Directors' Meeting
B. Regulatory streamlining
C. Update on Federal and local fishery-related legislation
D Status of Hawaii $5 million disaster funds for Federal fisheries
E.Recreational fisheries data and management
F.WPacFIN
G.Revisions to national standard 1
H.Stock Assessment Planning
I.NEPA Activities
1.Archipelagic management
2.Squid &seabird measures
3.Sharks, PFADs, recreational fishing
J. Programmatic grants report
15.Administrative matters
A.Financial reports
B. Administrative report
C. Meetings and workshops
D. Advisory group changes
16. Other business

Background Information

1. Public Hearing on Electronic Logbook Amendment (action item)

The Council will consider final action on a proposed regulatory amendment under all five western Pacific fishery management plans that would allow fishermen the option of using NMFS approved electronic logbook books instead of the Federal paper logbook forms that are now required. In its initial action, the Council recognized that the availability and capability of personal computers has increased to the point where using them to record fisheries dependent information can benefit Western Pacific fishery participants and NMFS. The benefits of electronic logbook forms include significant time savings for fishery participants, increased data accuracy, and time and money savings for NMFS.

The alternatives considered in the draft regulatory amendment range from maintaining the current regulations, to requiring the use electronic logbook forms and requiring their transmission via e-mail or satellite systems. In recognition of the fact that not all fishery participants may have technology or desire to use electronic logbooks, the preferred alternative would amend the five Fishery Management Plans of the Western Pacific to allow the optional use of electronic logbook forms, and the submission of such forms on non-paper media or transmitted via e-mail or satellite systems. This option would be available to current participants in those fisheries with Federal reporting requirements (meaning fisheries in which participants submit Federal logbooks directly to NMFS) as well as future participants in fisheries that may become subject to Federal reporting.

2. Regulatory Amendment to Establish Additional Measures to Conserve Sea Turtles (action item)

At its 121st meeting, the Council took action on long term measures to implement new technology to reduce and mitigate turtle-longline interactions in the Hawaii longline fishery. The Council took final action to re-establish a limited (2,120 sets annually) Hawaii-based shallow-set fishery using new technologies (circle hooks, mackerel-type bait, and dehookers) to reduce and mitigate sea turtle interactions. However, several additional issues remained unresolved and were considered by the Council at its 122nd meeting in March 2004. These issues arose because on April 1, 2004, a Court order vacated the sea turtle conservation regulations promulgated in 2001. The Council's management regime for the Hawaii-based pelagic longline fishery was to be implemented on that date, however existing measures for other Western Pacific pelagic fisheries were not replaced and required further Council action. Accordingly, at its 122nd meeting, the Council took initial action and recommended that the following alternatives be adopted in a regulatory amendment containing additional measures to conserve sea turtles:

1. To require annual attendance at a NMFS Protected Species Workshop by operators and owners of general longline vessels (vessels registered to general longline permits and those that in the future will be registered to American Samoa limited access longline permits) - with consideration of mechanisms for remote attendance.

2. To require general longline vessels to carry and use dip nets, line clippers, and bolt cutters and follow turtle resuscitation and release guidelines (note, with an exemption from carrying a dipnet or long-handled line clipper for small longline vessels with freeboard ≤3 ft (.9144 m)).

3. To require non-longline pelagic vessels targeting pacific management unit species with hooks to remove trailing gear from accidently caught turtles and to follow turtle resuscitation and release guidelines, wherever they fish.

4. To require longline vessels registered for use with general longline permits to use circle hooks and mackerel-type bait and dehookers when shallow-setting north of the equator.

At the 123rd meeting the Council will review the regulatory amendment

document, and may take final action with a recommendation that the regulatory amendment document be finalized and transmitted to NMFS for review and approval.

3. Consideration of Longline Gear Side-Setting as an Option (action item)

In November 2000, the USFWS issued a BiOp which contained reasonable and prudent measures for minimizing interactions with the endangered shorttail albatross. The BiOp recognized that the Hawaii-based longline fishery at that time comprised two segments, namely a deep-setting tuna-targeting segment, and a shallow-setting swordfish targeting segment. All longline vessels fishing above 23° N' lat. were required to use thawed blue dyed bait and employ strategic offal discards when setting and hauling the longline. Vessels setting deep to catch tuna were also required to use a line setting machine with weighted branch lines. Vessels setting shallow to target swordfish were required to begin setting the longline at least 1 hour after local sunset and complete the setting process by local sunrise, using only the minimum vessel lights necessary. The Council recommended a regulatory amendment to require these measures and a final rule was published in May 2002. However, the final rule did not include a requirement for night setting due to an earlier closure of the swordfish segment of the Hawaii-based fishery in early 2001, under separate rule making in compliance with a March 2001, BiOp issued by NMFS regarding sea turtles. The Council recently completed a regulatory that re-opened the swordfish-targeting segment of the Hawaii longline fishery in April 2004, which included the night setting requirement. During 2002 and 2003, additional seabird mitigation research field tests were conducted with underwater setting chutes, blue dyed bait and side setting. Side setting, as the term implies, means setting the longline from the side, rather than from the stern of the vessel. While all measures worked well, side setting was the only method which virtually reduced the interaction rate between longline and seabirds to zero. However, side setting is not included within the suite of measures required in the USFWS BiOp, nor in the regulations for the Hawaii-based fishery. At its 122nd meeting, the Council, discussed the potential for amending its requirements for seabird mitigation above 23° N' lat. to include side setting, an underwater setting chute or towed deterrent as measures that fishermen may elect to use in place of blue dyed bait, strategic offal discards and night setting. The Council directed the staff to prepare a regulatory amendment to the Pelagics FMP that examines a range of alternatives for seabird mitigation which included the choices for longline fishermen of either the use of side setting, use of an underwater setting chute, or other acceptable measures. At its 123rd meeting, the Council may take initial action to select a preferred alternative and direct staff to complete a regulatory amendment in order to take final action at its next meeting.

4. Preliminary CNMI Bottomfish Management Options (initial action)

A public hearing will be held to solicit comments on preliminary alternatives to manage the bottomfish fishery around the CNMI. Based on comments received during public scoping meetings held in CNMI, the Council developed preliminary options including limiting the harvest of bottomfish, reporting requirements, establishing area closures, gear and vessel restrictions, and other control measures expressed by the public during the scoping meetings. At its 122nd meeting, the Council endorsed the range of options and asked that alternatives be further developed including an analysis of each option. At the 123rd meeting, the Council may take initial action on a preferred alternative and direct staff to develop an amendment to the Bottomfish FMP that may be considered for final action at the 124th meeting in October 2004.

Although non-emergency issues not contained in this agenda may come before the Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this document and any issue arising after publication of this document that requires emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808)522–8220 (voice) or (808)522–8226 (fax), at least 5 days prior to the meeting date.

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

Dated: May 17, 2004.

Galen R. Tromble,

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

[FR Doc. 04–11580 Filed 5–20–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041304B]

Endangered Species; File No. 1260

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

ACTION: Issuance of permit modification.

SUMMARY: Notice is hereby given that the NMFS Southeast Region (SER) has been issued a modification to scientific research Permit No. 1260.

ADDRESSES: The modification and related documents are available for review upon written request or by appointment in the following office: Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376.

FOR FURTHER INFORMATION CONTACT: Patrick Opay or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: On March 1, 2004, notice was published in the **Federal Register** (69 FR 9596) that a modification of Permit No. 1260, issued June 29, 2001 (66 FR 34621), had been requested by the above-named organization. The requested modification has been granted under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The modification authorizes the permit holder to take an additional 14 loggerhead and 6 Kemp's ridley sea turtles annually, and adds an annual take authorization of 9 leatherback, 6 green and 6 hawksbill sea turtles to the permit. Turtles will be handled, flipper tagged and measured after they have been captured during fishery resource assessment cruises, and then released. The modification does not cover the incidental capture of the sea turtles, which is authorized separately in the biological opinion relating to the authorization of the assessment cruises.

Issuance of this modification, as required by the ESA was based on a

finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: May 14, 2004.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 04–11581 Filed 5–20–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050604A]

Endangered Species; File No. 1475

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

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that the Florida Fish and Wildlife Conservation Commission, Florida Marine Research Institute (Richard E. Matheson, Principal Investigator), 1481 Market Circle, Unit 1, Port Charlotte, FL 33953, has applied in due form for a permit to take smalltooth sawfish (*Pristis pectinata*) for purposes of scientific research.

DATES: Written, telefaxed, or e-mail comments must be received on or before June 21, 2004.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing email comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 1475.

FOR FURTHER INFORMATION CONTACT: Jennifer Jefferies or Jill Lewandowski, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The purpose of the project is to conduct research and monitoring on smalltooth sawfish in the State of Florida, especially the Charlotte Harbor estuarine system where sawfish are known to frequent. Researchers would characterize habitat use, relative abundance, juvenile recruitment, and temporal and spatial distributions of this species through the following research methodologies: capture via seines, hook and line and gillnets, measure, genetic sampling, PIT and rototagging and release of 135 juvenile and 65 adult smalltooth sawfish throughout the state of Florida. In addition, a subset of 25 juveniles and 25 adults would also have acoustic tags attached, and a subset of 10 juveniles and 15 adults would also have satellite tags attached. The researchers are requesting authorization for these activities for five years.

Dated: May 17, 2004.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 04–11582 Filed 5–20–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by June 21, 2004.

Title and OMB Number: Revitalizing Base Closure Communities, Economic Development Conveyance Annual Financial Statement; OMB Number 0790–0004.

Type of Request: Extension.

Number of Respondents: 79.

Responses per Respondent: 1.

Annual Responses: 79.

Average Burden per Response: 40 hours.

Annual Burden Hours: 3,160.

Needs and Uses: The information collection requirement is necessary to verify that Local Redevelopment Authority (LRA) recipients of no-cost Economic Development Conveyances (EDCs) are in compliance with the requirement that the LRA reinvest proceeds from the use of EDC property for seven years. Respondents are LRAs that have executed no-cost EDC agreements with a Military Department that transferred property from a closed military installation. As provided by Section 2821(a)(3)(B)(i) of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. 106–65), such agreements require that the LRA reinvest the proceeds from any sale, lease or equivalent use of EDC property (or any portion thereof) during at least the first seven years after the date of the initial transfer of the property to support the economic redevelopment of, or related to, the installation. The Secretary of Defense may recoup from the LRA such portion of these proceeds not used to support the economic redevelopment of, or related to, the installation. LRAs are subject to this same seven-year reinvestment requirement if their EDC agreement is modified to reduce the debt owed to the Federal Government. Military Departments monitor LRA compliance with this provision by requiring an annual financial statement certified by an independent Certified Public Accountant. No specific form is required.

Affected Public: Not-for-profit institutions; State, Local or Tribal Government.

Frequency: Annually.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Ms. Jacqueline Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/ESCD/ Information Management Division, 1225 South Clark Street, Suite 504, Arlington, VA 22202–4326.

Dated: May 14, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–11465 Filed 5–20–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting

DATES: The meeting will be held at 0830, Tuesday, June 22, 2004.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Mr. Eric Carr, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition, Technology and Logistics to the Director, Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Defense Advanced Research Projects Agency and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on microwave technology, microelectronics, electro-optics, and electronics materials.

In accordance with section 10(d) of Public Law 92–463, as amended, (5 U.S.C. App. section 10(d)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1), and that accordingly, this meeting will be closed to the public.

Dated: May 17, 2004.

L.M. Bynum,

Alternate, OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–11466 Filed 5–20–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are available for licensing by the Department of the Navy. U.S. Patent No. 6,647,297: A Permanent Retinal Implant Device, Navy Case 83,839.//U.S. Patent Application Serial No. 09/840,235: Method for Color Image Fusion, Navy Case No. 82,413.//U.S. Patent Application Serial No. 10/673,352: Microelectronic Cell Electroporation Array, Navy Case No. 84,495.//Navy Case No. 84,655: An Algorithmic Means of Increasing the Spatial Acuity of a Focal Plane Array (FPA) Electro-Optic (E-O) Imaging System by Accumulating Multiple Frames of Imagery into a Single Composite Image.

ADDRESSES: Requests for copies of the inventions cited should be directed to the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, and must include the Navy Case number.

FOR FURTHER INFORMATION CONTACT: Jane F. Kuhl, Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone (202) 767–3083. Due to temporary U.S. Postal Service delays, please fax (202) 404–7920, E-Mail: *kuhl@utopia.nrl.navy.mil* or use courier delivery to expedite response.

(Authority: 35 U.S.C. 207, 37 CFR Part 404.)

Dated: May 17, 2004.

S.A. Hughes,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 04–11539 Filed 5–20–04; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Chief of Naval Operations (CNO) Executive Panel

AGENCY: Department of the Navy, DOD.

ACTION: Notice of closed meeting.

SUMMARY: The Chief of Naval Operations (CNO) Executive Panel Near-Term Assessment Study Group will meet to discuss recent trends in Basing, Technology, Alliances, and Defense Policy and their effect on Navy policy and operations.

DATES: The meeting will be held on Friday, June 11, 2004, from 12 p.m. to 1 p.m.

ADDRESSES: The meeting will be held at the Chief of Naval Operations Office, Room 5E540, 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Commander Jon Huggins, CNO Executive Panel, 4825 Mark Center Drive, Alexandria, VA 22311, 703–681–6207.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), these matters constitute classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

Dated: May 17, 2004.

S.A. Hughes,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 04–11538 Filed 5–20–04; 8:45 am]

BILLING CODE 3810–FF–P

DENALI COMMISSION

5-Year Strategic Plan

Introduction

The Denali Commission Act of 1998 (Title III, Pub. L. 105–277, 42 U.S.C. 3121) created a State-Federal partnership to address crucial needs of rural Alaskan communities, particularly isolated Native villages and other communities lacking access to the national highway system, affordable power, adequate health facilities and

other impediments to economic self sufficiency. Guided by five Commissioners representing statewide non-governmental organizations, the unprecedented results to date testify to the efficacy of inter-agency teamwork, effective training, and the setting of high sustainability standards by those closest to the problems at hand. The Commission is a highly effective catalyst for enhanced collaboration among Federal, State, tribal and local governments as well as private sector, non-profit and other interests. The over arching goal of enabling economic self sufficiency is based on effective community comprehensive planning, and regional support.

This document will guide the reader through:

- An introduction of the Denali Commission's purposes and mission.
- The Denali Commission's Work Plan for Fiscal Year 2005.
- The 5-year strategic plan.

Purpose of the Commission

The Denali Commission Act of 1998, as amended (Division C, Title III, Pub. L. 105–277) states that the purposes of the Denali Commission are:

To deliver the services of the Federal Government in the most cost-effective manner practicable by reducing administrative and overhead costs.

To provide job training and other economic development services in rural communities, particularly distressed communities (many of which have a rate of unemployment that exceeds 50 percent).

To promote rural development, provide power generation and transmission facilities, modern communication systems, bulk fuel storage tanks, water and sewer systems and other infrastructure needs.

Vision

Alaska will have a healthy well-trained labor force working in a diversified and sustainable economy that is supported by a fully developed and well-maintained infrastructure.

Mission

The Denali Commission will partner with tribal, Federal, State, and local governments and collaborate with all Alaskans to improve the effectiveness and efficiency of government services, to develop a well-trained labor force employed in a diversified and sustainable economy, and to build and ensure the operation and maintenance of Alaska's basic infrastructure.

Values

Catalyst For Positive Change—The Commission will be an organization through which agencies of government, including Tribal governments, may collaborate, guided by the people of Alaska, to aggressively do the right things in the right ways.

Respect For People and Cultures—The Commission will be guided by the people of Alaska in seeking to preserve the principles of self-determination, respect for diversity, and consideration of the rights of individuals.

Inclusive—The Commission will provide the opportunity for all interested parties to participate in decision-making and carefully reflect their input in the design, selection, and implementation of programs and projects.

Sustainability—The Commission will promote programs and projects that meet the current needs of communities and provide for the anticipated needs of future generations.

Accountability—The Commission will set measurable standards of effectiveness and efficiency for both internal and external activities.

Goals

The goals generated by the strategic planning process define conditions that must be created to realize the Denali Commission Vision.

1. All Alaska, no matter how isolated, will have the physical infrastructure necessary to protect health and safety and to support self-sustaining economic development.

2. Local residents in Alaskan communities will be provided the opportunity to acquire the skills and knowledge necessary to be employed on the construction, operation and management jobs created by publicly funded physical infrastructure in their communities.

3. Alaskans will have access to financial and technical resources necessary to build a cash economy to supplement the existing subsistence economy.

4. Federal and State agencies will simplify procedures, share information, and improve coordination to ensure equitable delivery of services to all Alaskan communities.

Implementation Guiding Principles

- Projects must be sustainable. To assist with the implementation of this principle, an *Investment Strategy* has been drafted to ensure that the level of funding provided by the Denali Commission to infrastructure projects in small, declining and/or environmentally threatened communities serves a public purpose and is invested in the most conscientious and sustainable manner possible. (The *Investment Strategy* is available on the Denali Commission Web site: *http://www.denali.gov*)
- The Denali Commission will generally not select individual projects for funding nor manage individual projects, but will work through existing State, Federal or other appropriate organizations to accomplish its mission.
- Projects in economically distressed communities will have priority for Denali Commission assistance.
- Projects should be compatible with local cultures and values.
- Projects that provide substantial health and safety benefit, and/or enhance traditional community values, will generally receive priority over those that provide more narrow benefits.
- Projects should be community-based and regionally supported.
- Projects should have broad public involvement and support. Evidence of support might include endorsement by affected local government councils (municipal, Tribal, IRA, etc.), participation by local governments in planning and overseeing work, and local cost sharing on an "ability to pay" basis.
- Priority will generally be given to projects with substantial cost sharing.
- Priority will generally be given to projects with a demonstrated commitment to local hire.
- Denali Commission funds may supplement existing funding, but will not replace existing Federal, State, local government, or private funding.
- The Denali Commission will give priority to funding needs that are most clearly a Federal responsibility.
- Denali Commission funds will not be used to create unfair competition with private enterprise.

Additional Guiding Principles for Infrastructure:

- A project should be consistent with a comprehensive community or regional plan.
- Any organization seeking funding assistance must have a demonstrated commitment to operation and maintenance of the facility for its design life. This commitment would normally include an institutional structure to levy and collect user fees if necessary, to account for and manage financial resources, and having trained and certified personnel necessary to operate and maintain the facility.

Additional Guiding Principles for Economic Development:

- Priority will be given to projects that enhance employment in high unemployment areas of the State (economically distressed), with emphasis on sustainable, long-term local jobs or career opportunities.
- Projects should be consistent with statewide or regional plans.

• The Denali Commission may fund demonstration projects that are not a part of a regional or statewide economic development plan if such projects have significant potential to contribute to economic development.

Additional Guiding Principles for Training:

• Training should increase the skills and knowledge of local residents to become employed on jobs created by the Government's investment in public facilities in a community.

Intergovernmental Coordination—The Memorandum of Understanding: The Denali Commission Act recognizes that our mission can be accomplished only through a collaborative, coordinated effort by the State of Alaska and key Federal agencies. The State of Alaska also recognizes benefits can be furthered if State agencies work in a collaborative and coordinated effort. With this in mind, Denali Commission has drawn up a Memorandum of Understanding (MOU), which more than 20 agencies have agreed to, that outlines some points of agreement that will facilitate the collaboration and coordination necessary for achievement of the purposes of the Denali Commission and related missions of agencies who are parties to the MOU.

The points of the MOU are

• *Sustainability.* Federal and State agencies recognize the importance of utilizing sustainability principles when investing in public infrastructure projects

• *Regional Strategies.* Systematic planning and coordination on a local, regional and statewide basis are necessary to achieve the most effective results from investment in infrastructure, economic development, and training.

• *Community Plans.* A single community strategic plan should be sufficient to identify and establish the priorities of each rural community.

• *Sharing Information.* Sharing information increases efficiencies and decreases duplication of services by State and Federal agencies.

• *Economic Development.* Economic development facilitates and supports the growth of self-sufficient communities.

• *Non-Profit Organizations and Other Community Organizations.* Non-profit and other organizations in Alaska are a valuable resource for State and Federal Agencies. They provide regional planning, program support and partnering opportunities

• *Workforce Development (Vocational and Career Training).* Workforce development is a critical component to building sustainable public infrastructure and self-sufficient communities in Alaska.

Fiscal Year 2005 Work Plan

The Commission has determined that the scope and scale of infrastructure issues facing rural Alaska are staggering. The total of known basic infrastructure needs for Alaskan communities is estimated to be over $13 billion. These infrastructure needs include:

- Infrastructure
  Housing Construction/Development
  —Multi-use Facilities
  —Power Utilities
  —Fuel Storage
  —Drinking Water and Waste Water Facilities
  —Solid Waste Management Facilities
  —Health Care Facilities
  —Airport Facilities
  —Road and Trail Construction
  —Port, Dock and Other Marine Facilities
  —Telecommunications
  —Community Facilities
- Economic Development
  —Comprehensive Planning
- Job Training, Education, Capacity Building
  —Comprehensive Planning

In Fiscal Year 2005, the Denali Commission will continue to collaborate with other funding agencies and with all impacted and interested parties to address identified needs on a priority basis. In addition to FY05 appropriated funds of $2.5 million the Commission expects to receive approximately $3.8 million in interest from the Trans Alaska Pipeline Liability (TAPL) fund and $22 million from the Department of Health & Human Services.

Prioritization of Projects for FY 2005

Of necessity, the Commission's work must be phased over a number of years based on the urgency of competing needs and availability of funding. The theme of rural energy, as one important prerequisite to all other utilities and economic development, was selected as the Commission's top priority for infrastructure funding. Primary health care facilities were identified as the second infrastructure theme for the Commission beginning in FY00. These two themes will continue to be the top priorities for infrastructure funds through FY05, and the Commission, consistent with Congressional intent, may add one or more additional themes.

For planning purposes, the Commission has allocated a total of $28,300,000 using the Commission's approved formula for FY05:

	FY05 projected funding	TAPL interest funds	TAPL & FY05 combined
Bulk Fuel	.....	$3,610,000	$3,610,000
Health Clinics	$20,900,000	.....	20,900,000
Operations	3,600,000	190,000	3,790,000
Total	24,500,000	3,800,000	28,300,000

In accordance with the Denali Commission Code, Administrative funds (5%) are solely the responsibility of the Federal Co-Chair. Allocation of the balance of funds (95%) will be made by the full Denali Commission, utilizing the guiding principles previously outlined in this document, and priority systems designed specifically for each budget category.

Project implementation will generally be accomplished through State, local or Federal government entities, regulated utilities, or non-profit organizations. It shall be the responsibility of all such implementing organizations to comply with all applicable laws. Any special requirements will be articulated in the funding agreement between the Denali Commission and the funding recipient. The MOU will serve to guide intergovernmental coordination and collaboration among agencies.

Projects resulting from funding of infrastructure themes generally are consistent with high priorities identified in community plans. The existence of community plans greatly facilitates the location, design, and completion of infrastructure projects within a community.

Performance Indicators for FY 2005

Energy:

• Reduce the backlog of non-compliant bulk fuel storage facilities in

rural Alaska by renovating or building a bulk fuel storage facility in 2 communities.

Health Care:

• Complete construction or renovation of primary health care facilities in 12 communities.

Financial and Technical Resources:

• Produce reliable and timely performance and other financial information from the financial management system for managing current operations.

• Prepare accurate and timely financial reports on Budget Execution in accordance with generally accepted accounting principles and meeting the requirements of the Office of Management and Budget and U.S. Treasury.

Government Coordination:

• Maintain administrative expenses of Denali Commission at 5% or less of appropriated funds.

• Hold Denali Commission partners to the lowest reasonable overhead costs needed to complete projects.

Work Toward the President's Management Agenda

President George W. Bush has set forth a strategy to improve management of the Federal government through government-wide goals in five mutually reinforcing areas:

—Human Capital
—Competitive Sourcing
—Improved Financial Management
—Expanded e-Government
—Budget and Performance Integration

The Denali Commission is making progress in these strategic areas in the following ways.

Human Capital

The Denali Commission attempts to be innovative in its recruitment and retention of staff. With a small permanent staff and "on-loan" staff from partner agencies and organizations, the Denali Commission has a flat organization chart, making it simple for customers to reach the staff they need to and get the answers they require, through electronic messaging, telephone, or in-person.

An additional advantage of a small organization is the ease of managing the accurate measurement and appropriate rewarding of staff for performance. Denali Commission utilizes many human capital investment-oriented strategies for retaining qualified and effective staff, such as preventive health programs, and appropriate training.

Competitive Sourcing

As a very small agency headquarters, Denali Commission is highly motivated, by necessity, to comply with this initiative. Although formal assessments have not been carried out on the competitive sourcing opportunities, Denali Commission regularly utilizes contractors and private enterprise for many of our tasks. Examples include development of innovative database and accounting systems, computer maintenance, and document scanning services.

Improved Financial Management

Five of the Denali Commission permanent staff are responsible for all operations and finance. Limited to 5% overhead, the agency has, and will continue to, enthusiastically participate and pursue automation and forward-thinking technology whenever possible. Through advances in technology, we will continue to realize internal efficiencies and increases in effectiveness.

To keep pace with the Government-Wide-Accounting (GWA) initiative, a new accounting system was developed in FY 04. The Commission utilizes the Veterans Affairs (VA) Financial Services Enterprise Center as consultants on this project. This accounting system maintains the highest quality of accuracy in reporting to OMB, Congress and the public.

Staff are working in conjunction with other Federal agencies to accomplish automation to the extent feasible, with Federal Treasury payment and collection systems (IPAC, ASAP and SPS). We are currently a pilot test site for the Internet Payment Platform (IPP) which is being developed by Treasury for the efficient and timely payment of vendors.

Expanded E-Government

Denali Commission is committed to managing our projects more effectively and more transparently to partners, customers and the public. The Denali Commission Project Database is a significant step in this direction. The Denali Commission Project Database, now operational on our Web site, is an initiative that permeates several of the five strategic areas of the President's Management Agenda. To enhance project management and information sharing with our partners and the public, Denali Commission has developed an Internet-based database of all Commission projects. This tool is for tracking and managing Denali Commission and partner project data. The database is built to provide information that is easy to use, has the highest degree of integrity and maintainability, and is accessible for all interested parties. In keeping with the Denali Commission mission, the system allows for collaboration to improve the effectiveness and efficiency of government services. Within the database, managers and grantees perform on-line reporting; provide project financial information, project photos and other information on all Commission funded projects. Also available within the database are priority lists of projects yet to be funded in communities across Alaska. Across the State of Alaska, Federal, State and local entities (including regional non-profits, health corporations, and tribal governments) share a vision for developing a shared, central database (or portal) to further improve the transparency of government.

Denali Commission now has an active link to our agency Web site located on *http://www.FirstGov.gov* to help citizens find information and obtain services from that central location. We are working to place Denali Commission grant opportunities on the *http://www.Grants.gov* Web site as well. Additional e-Government projects that Denali Commission is monitoring and will participate in include e-Travel and e-Authentication. To maximize IT partnerships (and coordination) with other federal agencies, Denali Commission works with the Federal Aviation Administration (FAA) and Department of the Interior (DOI) to support our local computer network.

Our commitment to internet and electronic payment and collection systems is hailed by our vendors and customers, especially in this large state with sometimes slow and unpredictable mail and telephone (Internet) services. These systems assist with streamlining and ensuring timely and accurate transactions.

As we build and develop strong IT infrastructure at Denali Commission, we maintain a high level of vigilance that proper and adequate security is set in place. Our plan for IT development always includes an assessment of value to the public, avoidance of duplication and the goal of transparency and accountability.

Budget and Performance Integration

The Denali Commission, by legislation, is limited to 5% overhead/administrative rate. So, 95% of our funds go directly into making progress toward our vision:

> Alaska will have a healthy, well-trained labor force working in a diversified and sustainable economy that is supported by a fully developed and well-maintained infrastructure.

Denali Commission has set in motion the tools to assist the staff in measuring

performance—the Project Database and the new accounting system. We require our grantees to establish and meet milestones, and we publish those on the Project Database. We set goals at an agency level for construction projects reaching completion each year. That is the bottom line that will improve the lives of the residents of Alaska. And we set internal benchmarks for the quality and efficiency of services provided to our customers. That keeps the Denali Commission staff on track in prioritizing individuals' work time. We measure ourselves against these standards constantly and check on them as a team monthly.

Strategic Plan—2005–2009

Challenges to Development and Economic Self-Sufficiency in Alaska

Geography/Climate—The State of Alaska encompasses twenty percent of the landmass of the United States, encompassing five (5) climatic zones from the arctic desert to moderate rain forests in the south.

Isolation—Approximately 220 Alaskan communities are accessible only by air or small boat. Some village communities are separated by hundreds of miles from the nearest regional hub community or urban center. The average community is over 1,000 miles from the state capital.

Unemployment—The economy of rural Alaska is a mix of government or government-funded jobs, natural resource extraction and traditional Native subsistence activities. Many rural Alaskans depend on subsistence hunting, fishing and gathering for a significant portion of their foods, but also depend on cash income to provide the means to pursue subsistence activities. Cash-paying employment opportunities in rural Alaska are scarce and are highly seasonal in many areas; unemployment rates exceed 50% in 147 communities.

High Cost and Low Standard of Living—Over 180 communities suffer from inadequate sanitation or a lack of safe drinking water. Residents face high electric costs: 61 cents per kilowatt-hour for electricity in a few communities (average in rural Alaska is approximately 40 cents per kilowatt-hour which is over 6 times the National average of 6.75 cents) even with State subsidies.

The Commission determined that the scope and scale of infrastructure issues facing rural Alaska are staggering. Assessment of needs and refinement of estimates will be an ongoing process. The total of known infrastructure needs is estimated to be over $13 billion. Training and economic development needs have not been quantified, but the unmet needs in these areas are also believed to be quite large. Consequently, it is imperative that efforts to address the most essential needs be both focused and strategic.

Funding category	Category / class	Needs ($)	Total ($)
Infrastructure	Housing Construction/Development	1,800,000,000	
	Power Utilities	300,800,000	
	Fuel Storage	362,500,000	
	Drinking Water and Waste Water Facilities	650,000,000	
	Solid Waste Management Facilities	(1)	
	Primary Health Care Facilities	481,000,000	
	Other Health Facilities	514,000,000	
	Airport Facilities	1,300,000,000	
	Road Construction	8,600,000,000	
	Port Facilities	300,000,000	
	Telecommunications	(1)	
	Community Facilities	(1)	
	Other	(1)	
	Subtotal		13,794,300,000
Economic Development	Comprehensive Planning	(1)	
	Other	(1)	
Job Training, Education, Capacity Building.	Comprehensive Planning	(1)	
	Other	(1)	
	Total		13,794,300,000

* Supporting information for the assessed need by category is provided in Appendix A
[1] Unknown.

Goals, Objectives and Key Activities

Goal #1:

All Alaska, no matter how isolated, will have the physical infrastructure necessary to protect health and safety and to support self-sustaining economic development.

Objectives:

1. Energy facilities (bulk fuel storage, power generation and transmission) will be constructed and upgraded at a significantly accelerated pace.

2. All Alaskans will have reasonable access to primary health care services.

3. All Alaskans will have safe drinking water and sanitary waste disposal systems.

4. All Alaskans will have reasonable access to telecommunication services comparable to those available in major urban centers at comparable costs.

5. Construction of other basic physical infrastructure including but not limited to roads, ports, airports, and community facilities will be accelerated on a priority basis.

Key Activities to Achieve Goals and Objectives:

- Complete a statewide energy strategy to clearly identify needs and set priorities for completion of bulk fuel storage facilities, power generation facilities including innovative and alternative facilities and power transmission facilities. The strategy will identify institutional structures and measures to achieve sustainable operation and maintenance of completed physical systems.
- Complete a statewide needs assessment for primary health care facilities and develop a system to establish priorities for completion of needed facilities.
- Collaborate with federal agencies and assist the State of Alaska as necessary in identifying gaps in funding for physical infrastructure that can be filled first by existing federal programs or, if necessary, by Denali Commission funding.

• Utilize the annual work plan development process to allocate funds to physical infrastructure categories. Allocation of funds to specific projects will generally be guided by statewide priority systems and comprehensive plans developed at the community and regional levels.

Performance Indicators:

• Reduce the backlog of non-compliant bulk fuel storage facilities in rural Alaska in 6 communities annually.

• Increase the reliability, efficiency and sustainability of power generation and/or transmission in 6 communities annually.

• Complete construction or renovation of primary health care facilities for at least 5 communities is anticipated annually.

• Enter into formal agreements with State and Federal agencies and others as appropriate to ensure accomplishment of objectives 3–5.

Goal # 2:

Local residents in Alaskan communities will have the opportunity to acquire skills and knowledge necessary to be employed on the construction, operation and management jobs created by publicly funded physical infrastructure in their communities.

Objectives:

1. Local residents will have access to skills and knowledge training that is necessary for employment on publicly funded physical infrastructure in their communities.

2. The Denali Commission's investment in physical infrastructure will be protected by local residents trained to operate and maintain facilities.

3. Workers from outside a community will not need to be imported to fill construction, operations and maintenance jobs necessary for publicly funded physical infrastructure.

4. Communities will benefit from the increase in earnings from local residents employed on publicly funded physical infrastructure.

Key Activities to Achieve Goals and Objectives:

• Provide funding to a coordinated training system including, regional and local coordination, career pathway information, specific training courses, union apprenticeship-based training and non-union based training.

• Partner with the State of Alaska, Native Non-Profit Corporations, private sector, union-based training organizations, non-union based training organizations and other federal agencies to create a coordinated system to meet the training needs of local residents.

• Provide financial assistance to communities and organizations that will provide specific training to local residents to become employed on construction, operations and maintenance jobs created by publicly funded physical infrastructure projects.

Performance Indicators:

• Increase the number of local area residents trained on construction, operations and maintenance of Denali Commission-funded physical infrastructure in Alaska by 5% annually.

• Increase the local resident payroll on Denali Commission funded projects by 2% annually.

• Increase the annual earnings of each local resident that completes Denali Commission funded training by 5%.

Goal # 3:

Rural Alaskans will have access to financial and technical resources necessary to build a cash economy to supplement the existing subsistence economy.

Objectives:

1. All Alaskans will have access to programs that provide entrepreneurial education. Technical assistance and business services will be available to entrepreneurs and business owners.

2. Entrepreneurs will have access to capital resources appropriate for their circumstances including bank loans, micro loans, BIDCO loans, venture capital, SBA loans, USDA Rural Development loans, U.S. Department of Commerce EDA loans or grants.

3. Support access to partnership funding for community based utilities, infrastructure and health delivery projects.

Key Activities to Achieve Goals and Objectives:

• Financial assistance will be provided through the State Department of Community and Economic Development and the First Alaskans Foundation to assist entrepreneurs, communities and regional entities to develop economic capacity.

• Financial assistance will be provided to Alaska Growth Capital to enable that company to make loans and provide hands on technical assistance to entrepreneurs in economically distressed areas of Alaska.

• The Denali Commission will work with financial institutions, foundations and other entities as appropriate to create a revolving loan fund expressly for funding feasibility studies.

• A minimum of two partnerships will be facilitated annually leading to completed projects within 5 years.

Performance Indicators:

• Minimum annual disbursement of financing by Alaska Growth Capital to business in communities defined as distressed by the Denali Commission will be $275,000.

• Annual payroll of projects financed through Alaska Growth Capital will be at least $90,000 and will increase annually by at least $30,000.

• A minimum of 5 feasibility studies for new business startups in economically distressed areas of Alaska will be funded annually from the revolving loan fund.

Goal # 4:

Federal and State agencies will simplify procedures, share information, and improve coordination to enhance and improve the efficiency of the delivery of services to Alaskans and the communities in which they reside.

Objectives:

1. The Denali Commission will limit its own administrative expenses to no more than 5% of its total budget and will ensure that all Denali Commission partners are kept to the lowest possible overhead needed to complete a project.

2. The Denali Commission will work to gain acceptance of a single community developed comprehensive plan as the basis for all Federal and State agency funding.

3. The Denali Commission will work to gain acceptance and utilization of a single comprehensive database for information (plans and project information) for rural Alaskan communities.

Key Activities to Achieve Goals and Objectives:

• The Denali Commission will work with key State and Federal agencies to complete and periodically update a memorandum of agreement that outlines key actions necessary to achieve this goal.

• The Denali Commission will actively engage the Alaska Federal Executives Association, consistent with its charter, as a means to achieve this goal.

• The Denali Commission will seek the guidance and assistance of the State Co-Chair as he/she works with the Governor's cabinet to assist in meeting these goals and objectives.

• Agreements with Denali Commission program implementation partners will be negotiated to achieve the minimum practicable overhead rates.

Performance Indicators:

• Administrative expenses of Denali Commission will be 5% or less.

• Denali Commission partners will be held to the lowest reasonable overhead costs needed to complete projects.

• An MOU will be reviewed annually, and updated as necessary to memorialize the commitment of Federal and State agencies to this goal.

• Progress in meeting these goals and objectives will be documented annually.

Implementation Guiding Principles

- Projects must be sustainable. To assist with the implementation of this principle, an *Investment Strategy* has been drafted to ensure that the level of funding provided by the Denali Commission to infrastructure projects in small, declining and/or environmentally threatened communities serves a public purpose and is invested in the most conscientious and sustainable manner possible. (The *Investment Strategy* is now available on the Denali Commission website for *public review and comment.*)
- The Denali Commission will generally not select individual projects for funding nor manage individual projects, but will work through existing State, Federal or other appropriate organizations to accomplish its mission.
- Projects in economically distressed communities will have priority for Denali Commission assistance.
- Projects should be compatible with local cultures and values.
- Projects that provide substantial health and safety benefit, and/or enhance traditional community values, will generally receive priority over those that provide more narrow benefits.
- Projects should be community-based and regionally supported.
- Projects should have broad public involvement and support. Evidence of support might include endorsement by affected local government councils (municipal, Tribal, IRA, etc.), participation by local governments in planning and overseeing work, and local cost sharing on an "ability to pay" basis.
- Priority will generally be given to projects with substantial cost sharing.
- Priority will generally be given to projects with a demonstrated commitment to local hire.
- Denali Commission funds may supplement existing funding, but will not replace existing Federal, State, local government, or private funding.
- The Denali Commission will give priority to funding needs that are most clearly a federal responsibility.
- Denali Commission funds will not be used to create unfair competition with private enterprise.

Additional Guiding Principles for Infrastructure:

- A project should be consistent with a comprehensive community or regional plan.
- Any organization seeking funding assistance must have a demonstrated commitment to operation and maintenance of the facility for its design life. This commitment would normally include an institutional structure to levy and collect user fees if necessary, to account for and manage financial resources, and having trained and certified personnel necessary to operate and maintain the facility.

Additional Guiding Principles for Economic Development:

- Priority will be given to projects that enhance employment in high unemployment areas of the State (economically distressed), with emphasis on sustainable, long-term local jobs or career opportunities.
- Projects should be consistent with statewide or regional plans.
- The Denali Commission may fund demonstration projects that are not a part of a regional or statewide economic development plan if such projects have significant potential to contribute to economic development.

Additional Guiding Principles for Training:

- Training should increase the skills and knowledge of local residents to become employed on jobs created by the Denali Commission's investment in public facilities in a community.
- In order to protect the federal investment, training should increase the local capacity to operate and maintain Denali Commission funded public infrastructure.

Intergovernmental Coordination—The Memorandum of Understanding:

The Denali Commission Act recognizes that our mission can only be accomplished through a collaborative, coordinated effort by the State of Alaska and key federal agencies. The State of Alaska also recognizes benefits can be furthered if State agencies work in a collaborative and coordinated effort. With this in mind, Denali Commission has drawn up a Memorandum of Understanding (MOU), which more than 20 agencies have agreed to, that outlines some points of agreement that will facilitate the collaboration and coordination necessary for achievement of the purposes of the Denali Commission and related missions of agencies who are parties to the MOU.

The points of the MOU are:

- *Sustainability.* Federal and State agencies recognize the importance of utilizing sustainability principles when investing in public infrastructure projects
- *Regional Strategies.* Systematic planning and coordination on a local, regional and statewide basis are necessary to achieve the most effective results from investment in infrastructure, economic development, and training.
- *Community Plans.* A single community strategic plan should be sufficient to identify and establish the priorities of each rural community.
- *Sharing Information.* Sharing information increases efficiencies and decreases duplication of services by State and Federal agencies.
- *Economic Development.* Economic development facilitates and supports the growth of self-sufficient communities.
- *Non-Profit Organizations and Other Community Organizations.* Non-profit and other organizations in Alaska are a valuable resource for State and Federal Agencies. They provide regional planning, program support and partnering opportunities
- *Workforce Development (Vocational and Career Training).* Workforce development is a critical component to building sustainable public infrastructure and self-sufficient communities in Alaska.

Appendix A: Needs Assessment Supporting Information

Power Utilities

Need: $300.8 million.

Annual Funding: Denali Commission to establish.

Source: AEA Assessment, 2000.

Background: 178 communities were surveyed by the Alaska Energy Authority (AEA) which was completed in 2000. The total need for power utilities which includes power plant construction, rehabilitation, distribution, and cost reduction projects totals $300.8 million. The information presented below is separated by needs of communities that are part of the Alaska Village Electric Cooperative (AVEC) and all other remote communities.

AVEC

$76,000,000—Power Plant Construction and Rehabilitation
$18,000,000—Wind Power Generation Projects
$1,800,000—Other Power Distribution
Total AVEC: $93,800,000

Other Communities

$131,000,000—Power Plant Construction and Rehabilitation
$20,000,000—Power Distribution Construction and Rehabilitation
$56,000,000—Energy Cost Reduction Projects *
Total for other communities: $207,000,000

Based upon current and projected funding, AEA anticipates completing the program of upgrading projects for communities outside of AVEC by 2015.

* Energy Cost Reduction Projects include: Alternative Energy Projects (Wind $30 million and Hydro $20 million) and Energy Efficiency Upgrades $6 million.

Bulk Fuel Storage

Need: $362.5 million.

Annual Funding: $55 to 65 million Denali Commission Funding.

Source: AEA Assessment, 2000.

Background: The Alaska Energy Authority (AEA) initiated an assessment of bulk fuel

tank farms in rural Alaska communities in 1996. This assessment was completed in 2000. In September 2003, staff was requested to undertake an analysis of what it would take to complete the bulk fuel program in four more years of funding for the remaining communities in the AEA assessment. For Federal Fiscal Years 1999 through 2003, the Commission allocated $97.5 million to bulk fuel projects. Thirty three bulk fuel facilities have been completed with at least partial Commission funding. Another 13 fuel facilities are in construction, and 53 projects have received some level of design funding. AEA is responsible for 141 projects while the Alaska Village Electric Cooperative (AVEC) has assumed responsibility for 51 communities under construction agreements between the Commission and AVEC. To date (including the 2003 construction season), AEA has upgraded 9,500,000 gallons of capacity and has projected that 11,000,000 of capacity remain to be upgraded. AVEC has completed 2.5 million gallons of fuel facility upgrades and has projected another 15.9 million gallons remain to be upgraded. The average project size AEA has undertaken is decreasing in size from an average of $2,100,000 in 2001 to a projected cost of $1,700,000 in 2004. The average cost of upgrading since 2001 (including the 2003 Construction Season) is approximately $15.00 per gallon. It was not anticipated that this cost would increase over the next few years, however there has recently been a 50% increase in the cost of steel, so material costs are rising. AVEC projects tend to be larger, more expensive projects than AEA projects. , since they are generally in larger communities.

The four year funding plan for bulk fuel indicates a need for $50 to $55 million for bulk fuel in FY04, and $55 to $65 million a year for the following three years, if projects are completed under our current standards and practices. This aggressive funding plan would result in completion of the known bulk fuel upgrade needs by the end of 2010

Water and Wastewater

Need: Current need: $650 million (FY 02 estimate for Alaska Natives only). (Funded Fiscal years 1960–2002: $1.33 billion)

Annual Funding: There are six existing primary funding sources for developing and improving water and wastewater facilities in rural Alaska. Those sources and the amounts contributed in federal fiscal year 2002 are shown below.

U.S. Public Health Service—Indian Health Service	$17,863,000
U.S. Environmental Protection Agency Drinking Water Tribal Set-Aside	3,958,200
U.S. Environmental Protection Agency Clean Water Tribal Set-Aside	7,053,100
U.S. Environmental Protection Agency Infrastructure Grant	36,494,500
U.S. Department of Agriculture—Rural Development	23,120,000
State of Alaska, Village Safe Water	19,873,370
Total	108,362,170

While these amounts vary from year to year, the annual average for fiscal years 1997 through 2002 is $85.7 million. The trend has been towards increased funding levels.

Background: Assistance in developing water and wastewater facilities in rural Alaska is provided to communities through two programs. The Alaska Native Tribal Health Consortium (ANTHC) is the organization responsible for administering Indian Health Service, and EPA Indian Set-Aside sanitation construction funds in Alaska. The Alaska Department of Environmental Conservation's Village Safe Water (VSW) program is the organization responsible for administering sanitation construction funds provided by the State, EPA (non-Tribal Set-Aside), and the USDA-Rural Development.

Both ANTHC and VSW work with rural communities to plan design and construct sanitation systems. ANTHC and VSW have developed a close working relationship despite the relative recent transfer of the sanitation program from IHS to ANTHC in October 1998. The priority funding lists of both organizations are coordinated and generally complement each other. ANTHC predominately works in Alaska communities with Native-owned homes, whereas VSW works in all rural communities (Native and non-Native). A lead agency is designated for each community receiving assistance. Lead agencies typically have responsibility for administering all State and Federal funding in the community.

Existing funding streams and programs are making progress towards satisfying the overall need for sanitation facilities in rural Alaska. An estimated remaining need of $650 million and a current funding level of $108 million combine to suggest a 6-year timeframe for meeting the need.

The Denali Commission has not targeted water and wastewater improvements as a major initiative for infrastructure funding due to the level of funding and effort already underway in this sector of critical infrastructure. However, the Commission is involved in improving planning and interagency coordination.

Primary Health Care Facilities

Identified Need: $145 Million from the Commission to fully address clinic needs.

Annual Funding: Typically $25 to 30 million.

Source: Annual funding is a mixture of Health Resources Services Administration (HRSA) funding and Denali Commission funding.

Background: It is estimated that funding of $220 million will be needed in order to address the expected demand for primary care clinics after the FY2004 funding cycle. At current match requirements, the Denali Commission estimated funding requirement will be $145 million.

The Commission has adopted a 7-Year plan for development of primary care clinics based upon annual funding cycles of $25 to $30 million. With this sustained funding level the Commission and its partners should be able to build or renovate a primary care clinic in every community in Alaska that wants such a facility and can demonstrate that clinic and the services are sustainable for 30 years. The Commission is beginning Year 3 of the plan with a goal to discontinue funding in FY2009 for primary care clinics except for expansions due to medical equipment upgrades and some renovations.

"Other Than" Primary Health Care Facilities

Identified Need: New Hospitals—$322.000,000 Expansion of existing Hospitals—$130,000,000 Expansion of Behavioral Health Facilities—$62,000,000

Annual Funding: Typically $6 million.

Source: Annual funding is a mixture of Health Resources Services Administration (HRSA) funding and Denali Commission Base funding.

Background: The estimated need for "Other Than" Primary Health Facilities which includes Hospitals, and Behavioral Health Facilities comes from the Denali Commission's April 16, 2003 White Paper on Expanding the Commission's Primary Care Program which can be found at the following link: *http://www.denali.gov/Health Care/Program_Documents/White Paper—Potential for Expanding the Denali Commission Primary Care Program to Other Types of Health Care Facilities.pdf*

Airport Facilities

Need: $1.3 billion.

Annual Funding: $65–90 million.

Source: Transportation Needs and Priorities in Alaska (November 2002) and Transportation Investment Analysis (Spring 2002), published by the State of Alaska Department of Transportation and Public Facilities (ADOT&PF).

Background: Alaska's extensive aviation system plays a crucial role in the movement of people and goods throughout the state. In many parts of rural Alaska, aviation serves as the principal link between communities. There are 1,112 designated airports, seaplane bases, and aircraft landing areas in the State of Alaska. The ADOT&PF owns and operates 261 public airports, the majority of Alaska's public airports. 23 public airports are owned and operated by local governments.

Nearly all of Alaska's airport capital improvements rely on funding from the Federal Aviation Trust Fund. This fund, supported by Federal taxes on airline tickets, cargo, and fuel, supplies monies for capital improvements through the Airport Improvement Program (AIP), which is authorized for funding on an annual basis. In recent years, AIP entitlement funds for Alaska's airports varied from approximately $65 million to $90 million annually. The State or local sponsor is required to contribute 6.25% in the form of match. The current AIP authorizing legislation expires on

September 30, 2003, and at this time, it is unknown what changes Congress may incorporate into the AIP legislation.

Road Construction and Major Maintenance

Need: $8.6 billion.

Annual Funding: $260–350 million.

Source: Transportation Needs and Priorities in Alaska (November 2002) and Transportation Investment Analysis (Spring 2002), published by the State of Alaska Department of Transportation and Public Facilities (ADOT&PF).

Background: Improved surface transportation can have many positive effects including lowering costs for goods and services, improving village to village interaction, and allowing for State and Federal investments in schools, clinics, airports, harbors, and tank farms to serve more communities per project. Because of its vast geographic expanse and young age as a state, Alaska continues to require significant resources for transportation improvements.

The list of unmet surface transportation needs in Alaska is about 1,950 projects with a total estimated cost approximating $8.6 billion. The primary funding source for surface transportation projects in Alaska is federal-aid highway funding, which flows through the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA). State funds are required to match these Federal funds; for most highway projects, the Federal ratio is 91 percent.

The State of Alaska administers most of the FHWA funding allocated to Alaska with the exception of money specifically designated for the Bureau of Indian Affairs (BIA), which currently amounts to approximately $17 million per year. One important distinction between FHWA and BIA funding for roads is the long-term maintenance obligation. Under FHWA, the recipient is responsible for maintenance in perpetuity, with no Federal support for this activity. Under the BIA funding system, such roads are then added to the Indian Reservation Road system (IRR) and are eligible for a share of a national pot of money allocated to maintenance of IRR roads.

Through the recent TEA–21 era, average funding levels have been approximately $350 million per year, up substantially from the approximately $220 million under ISTEA (1991–1997). Most FHWA funding received by the State stays in larger auto-dependent communities, with some funding going to rural communities largely for sanitation roads and trail markings. Funding for projects off the road system goes primarily to the larger hub communities.

Port Facilities

Need: $300 million.

Annual Funding: $7 to 15 million.

Source: Transportation Needs and Priorities in Alaska (November 2002) and Transportation Investment Analysis (Spring 2002), published by the State of Alaska Department of Transportation and Public Facilities (ADOT&PF).

Background: With over 30,000 miles of shoreline, relatively few roads, and 90 percent of the state's population living within ten miles of the coast or along a major river, Alaska's marine facilities are integral to the local, statewide, and international transportation of goods and people.

Ports and harbors have no federal capital assistance program comparably to the highway and airport funding programs. Federal funds for ports and harbors come through the U.S. Army Corps of Engineers. The Corps distributes funding on a nationally competitive, project-by-project basis. State and local communities in Alaska have been awarded between $7 and 15 million annually in federal funding for all Corps of Engineers programs in recent years. For construction, the Corps requires between 20 and 35 percent match for projects such as dredging basins, docks, floats, grids, and upland facilities. Though not a dedicated funding source, the Marine Users Fuel Tax is the traditional foundation of small boat harbor improvements in the State, and general obligation bonds have been the foundation of State assisted port development.

Telecommunications

Need: Unknown.

Annual Funding: $15m in FY03 and FY 04 funding for Regulatory Commission of Alaska's Rural Broadband Internet Grant Program. Several other funding support mechanisms including Universal Service Fund also exist.

Background: In January 2001, the Denali Commission, in partnership with the State of Alaska, completed an inventory of available telecommunication services in rural Alaska. Among other findings, the inventory found that 61% of all Alaskan communities do not have access to local dial-up Internet service. This identified need is being addressed through the Regulatory Commission of Alaska's Rural Broadband Internet Grant Program, Telecommunications Industry investment resulting in expansion of Internet offerings in most rural communities in the next 1–3 years.

Solid Waste Disposal Facilities

Need: Unknown.

Annual Funding: Generally less than $1,000,000.

Background: Solid waste disposal is a necessity for all rural Alaska communities as it is for every community in the country. Observation would indicate that the majority of rural Alaska communities do not have facilities that meet basic legal requirements for solid waste disposal. The Denali Commission received $1 million in FY 04 funding from USDA for the development of solid waste facilities in rural Alaska. Development of this innovative program and identification of projects is ongoing.

Community Facilities

Need: Unknown.

Annual Funding: Unknown.

Background: Communities have a need for community assembly facilities for various purposes, including planning, meetings, traditional functions, and recreation for youth. These facilities, when available, are heavily used in rural communities.

Appendix B: Program Principles Supporting Information

Rural Infrastructure Development

In the evolution of the Denali Commission and its approach to infrastructure development some principles have been established. These include the following:

- Selection of infrastructure themes for allocating funds. In FY99 rural energy was selected as the primary infrastructure theme. That priority was continued in FY00, and is expected to continue in FY01 and beyond. In FY00 rural health care facilities were selected as the second infrastructure theme. Other themes may be selected in future years.
- Selection of program/project partners to carry out infrastructure development. The Alaska Energy Authority (AEA) was selected as the Denali Commission's first partner for rural energy projects. AEA was selected because of its demonstrated capability to prioritize and implement rural energy projects. The Alaska Village Electric Cooperative was selected as the second energy partner and Alaska Native Tribal Health Consortium was selected as the Commission's primary partner for clinic design and construction. The overriding point in selection of a program/project partner is that the Commission wishes to utilize existing capabilities provided by State or Federal agencies or other organizations. More than one partner may be identified to participate in carrying out Commission sponsored programs/projects for a particular theme.
- Project selection by the Commission and/or the program/project partner must be defendable and credible. In the case of AEA, two separate comprehensive statewide project priority lists had been developed—one for bulk fuel storage facilities, and a second for power generation/distribution projects. As in the case of AEA the Commission will utilize existing credible priority systems. Where a credible statewide priority methodology for a selected theme does not exist, the Commission in cooperation with appropriate organizations will foster the development of a system. This is illustrated by the Commission's efforts in partnership with the Alaska Department of Health and Social Services, the Indian Health Service, and the Alaska Native Tribal Health Consortium to develop a prioritization methodology for primary health care facilities.
- Theme selection is a methodical process. The Commission has stressed the importance of comprehensive investigation and exploration of infrastructure themes so that Commission resources are strategically funneled to "gaps" in State and Federal funding streams. Carrying out needs assessments on various infrastructure themes is central to the development of a theme. Energy, telecommunications, and rural primary health care facilities are examples of assessments that were initiated in conjunction with interested State and Federal agencies in the Commission's first year.
- Commission partners are responsible for compliance with procedural and substantive legal requirements. It is the expectation of the Denali Commission that partners will comply

with all applicable local, State and Federal laws in carrying out Commission funded programs/projects. For example, the partner must address NEPA and OSHA regulations, Federal auditing requirements, competitive procurement issues and so forth. As a result, the Commission will look to partners who have demonstrated both administrative and program/project management success.

• Adherence to the successful project management elements of time, budget and quality. Each of these factors is central to Denali Commission agreements with partners. The Commission wants to put our partners in a position of success in meeting the triple constraint of project management: deliver the project on time, on budget and completion of the full project scope in a cost effective manner. The challenge to the Commission is to allow sufficient flexibility for each partner to carry out the programs/projects within their own established methods while assuring confident project completion and meeting all requirements of applicable laws and regulations. For example, the AEA employs a project methodology that relies heavily on force account construction (locally sponsored government crews). AEA also uses construction contracting to a lesser degree. In short, each agreement with a partner organization must be tailored to fit their approach to program/project management.

Rural Energy Approach

AEA has employed a two-step approach to bulk fuel project funding that is strongly supported by the Commission. Starting at the top of the AEA priority list, projects are provided 35% design funds one or more years before being eligible for capital funding. This allows for more accurate project cost estimates, resolution of easement and land issues, development of agreements between various local parties in site selection and tank farm ownership/maintenance. This step also serves to filter projects that are not ready for construction, for one reason or another, from advancing to the second step of project funding. This two-step approach ensures that funding does not sit unused by projects that are not ready for construction. Once a project has resolved any obstacles at the 35% design stage, then they are eligible for capital funding.

AEA will reevaluate its priority list from time to time in order to factor in new information, particularly information from the statewide energy strategy. This reevaluation may result in some modification of the list. Funding priorities will also be subject to "readiness to proceed" considerations as described in part above.

Rural Primary Care Facilities Approach

In the past, communities constructed clinics based upon available grant funds (typically community development block grants of $200,000 to $500,000). Consequently clinic square footage was based upon available funding and not necessarily upon health care delivery service appropriate for the population and demographics of the community. Many clinics are therefore undersized. In FY99 the Commission allocated $300,000 to undertake a needs assessment for rural primary care facilities. The needs assessment was completed in October 2000 and included a database of primary health care facility needs statewide as well as a project prioritization methodology. The Commission's investments in rural health facilities is based on this needs assessment.

Job Training Strategy

The Commission realizes that proper and prudent investment in public infrastructure must include a component for training local residents to maintain and operate publicly funded infrastructure. The Commission further realizes that through its investment in public infrastructure, such as bulk fuel storage facilities, it is creating numerous jobs related to the construction of these facilities and must develop a strategy to ensure local residents are properly trained to receive these jobs.

The Denali Commission's Training Strategy creates a statewide system to increase the local employment rates in Alaskan communities through the development of skills necessary to construct, maintain, and operate public infrastructure.

The Commission has approved 10% of the FY00–FY03 funding for implementation of the Training Strategy. In FY04 the Commission received appropriation direction for funding from the U.S. Department of Labor. Through this funding the Commission ensures local residents are employed on public facility construction projects in their communities, while also protecting the Denali Commission's investment in infrastructure by ensuring local residents are properly trained in the operations and maintenance of completed facilities.

The Denali Commission's Training Strategy involves several components that create a statewide system for job training outreach, coordination and delivery in rural Alaska. The Commission has partnered with several statewide organizations that will perform the necessary functions that make up the Denali Commission's Training Strategy.

The Training Strategy provides the Denali Commission the flexibility for future investment in job training needs statewide. Currently the Commission's partners and the Denali Training Fund are focusing on jobs created by the construction of energy and health related projects. In the future, the Training Strategy will focus its efforts on other areas where the Commission is investing.

Economic Development Strategy

The Denali Commission in not a funding agency for traditional economic development activities. The Commission has a strategy that outlines the appropriate role of the Commission in the area of economic development. The strategy includes the following components:

• The Commission, where appropriate will play the role of convener, bringing potential economic development participants together to support projects that meet Commission Standards outlined in paragraph IV below.

• The Commission will act as a facilitator to assist in matching high priority, high potential public or private investment opportunities with available funding sources.

• The Commission will serve as a catalyst for identification and removal of unnecessary economic development barriers by government.

In Fiscal Year 2004, a statewide Economic Development Committee was established under the authority of the Denali Commission.

Regional Development Strategy

The Denali Commission encourages communities/tribes to build a local comprehensive plan and strategy, a component of which will be economic development. A comprehensive plan may also be referred to as a Development Strategy.

Communities are encouraged to work with regional organizations such as ARDOR's, Regional Non-Profit Corporations, Borough Governments and Regional for-profit organizations to develop comprehensive strategies of which economic development will be a component. Regional strategies should take into consideration existing regional planning and strategy efforts including, but not limited to, the efforts of the FAA, HUD, Alaska DOT, ANTHC, Alaska VSW, State Division of Public Health, Alaska Department of Public Safety, regional non-profits and others.

The Denali Commission encourages the State to assist with technical support and funding at the local and regional level to build local and regional development strategies. The Denali Commission also encourages State and Federal governments to utilize the local and regional development strategies when prioritizing projects in the state or in a region.

Jeffrey Staser,

Federal Co-Chair.

[FR Doc. 04–11540 Filed 5–20–04; 8:45 am]

BILLING CODE 3300–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 21, 2004.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Alice Thaler, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of

1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.*, new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: May 18, 2004.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Extension.

Title: Migrant Education Program (MEP) Proposed Regulations, Sections 200.83, 200.84, and 200.88.

Frequency: Biennially; One time.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 43. Burden Hours: 19,925.

Abstract: Section 200.83 of the regulations for Title I, Part C establish the minimum requirements an SEA must meet for development of a comprehensive needs assessment and plan for service delivery as required under section 1306(b) of the Elementary and Secondary Education Act (ESEA), as amended (Pub. L. 107–110). Section 200.84 of the regulations establish the minimum requirements the SEA must meet to implement the program evaluation required under section 1306(b) of the Elementary and Secondary Education Act (ESEA), as amended (Pub. L. 107–110). Section 200.84 of the regulations establish the minimum requirements the SEA must meet to implement the program evaluation required under section 1304(c)(2) of ESEA. Section 200.88 of the regulations clarify that, for purposes of the MEP, only "supplemental" State or local funds that are used for programs specifically designed to meet the unique needs of migratory children can be excluded in terms of determining compliance with the "comparability" and "supplement, not supplant" provisions of the statute.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2481. When you access the information collection, click on "Download Attachments "to view. Written requests for information should be addressed to Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 04–11501 Filed 5–20–04; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Notices

AGENCY: Election Assistance Commission.

DATE AND TIME: Thursday, June 3, 2004, at 9 a.m.

PLACE: Loyola University, Water Tower Campus, 25 East Pearson, Chicago, IL 60611, 15th Floor, Kasbeer Hall.

STATUS: This meeting will be open to the public.

NOTE: Early arrival: Those attending are advised to arrive early for registration and security check.

PURPOSE: To conduct a public hearing to identify best practices, problems and transition issues associated with optical scan, punch card, and lever machine voting systems and the success and problems identified with the use of provisional voting.

The following witness panels will be presented: punchcard panel, lever machine panel, optical scan panel and provisional vote panel.

FOR FURTHER INFORMATION CONTACT: Bryan Whitener, Telephone: (202) 566–3100.

Paul S. DeGregorio,

Commissioner, Election Assistance Commission.

[FR Doc. 04–11687 Filed 5–19–04; 2:15 pm]

BILLING CODE 6820–01–M

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: Department of Energy.

ACTION: Submission for Office of Management and Budget (OMB) review; comment request.

SUMMARY: The Department of Energy (DOE) has submitted an information collection package to the OMB for extension under the provisions of the Paperwork Reduction Act of 1995. The package requests a three-year extension of its Contractor Legal Management Requirements, OMB Control Number 1910–5115. This information collection package covers information necessary to aid contractors and DOE personnel in making determinations regarding the reasonableness of all outside legal costs, including the costs of litigation.

DATES: Comments regarding this collection must be received on or before June 21, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, please advise the OMB Desk Officer of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at 202–395–7345.

ADDRESSES: Written comments should be sent to:

DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street, NW., Washington, DC 20503.

Comments should also be addressed to:

Lorretta D. Bryant, Acting Director, Records Management Division, IM–11/Germantown Bldg., Office of the Chief Information Officer, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585–1290; or by fax at (301) 903–9061, or by e-mail at *lorretta.bryant@hq.doe.gov;* and to

Anne Broker, GC–12, U.S. Department of Energy, Office of Dispute Resolution, 1000 Independence

Avenue, SW., Washington, DC 20585; or by fax at (202) 586–0325, or by e-mail at *anne.broker@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Lorretta D. Bryant, Acting Director, Records Management Division, Office of the Chief Information Officer, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585–1290, (301)–903–2164, or e-mail *lorretta.bryant@hq.doe.gov.* Also notify Anne Broker, GC–12, U.S. Department of Energy, Office of Dispute Resolution, 1000 Independence Avenue, SW., Washington, DC 20585 or by e-mail at *anne.broker@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: This package contains: (1) OMB No.: 1910–5115; (2) Package Title: Contractor Legal Management Requirements; (3) Purpose: The collection of this information continues to be necessary to provide a basis for DOE decisions on requests, from applicable contractors, for reimbursement of litigation and other legal expenses; (4) Estimated Number of Respondents: 33; (5) Estimated Total Burden Hours: The burden hours for this collection are estimated to be approximately 465 to 570 hours on an annual basis. This estimate is based on the estimate that the preparation of the initial plan is 15–30 hours and that no more than 20% of the 33 contractors will need to submit a legal management plan in any given year. The estimate for the total also includes an estimate of the approximately 10 hours for an annual budgetary update, which would be submitted by all contractors; (6) Number of Collections: The package contains 1 information and/or recordkeeping requirement.

Statutory Authority: These requirements are promulgated under authority in section 161 of the Atomic Energy Act of 1954, 42 U.S.C. 2201; the Department of Energy Organization Act, 42 U.S.C. 7101, *et seq.*; and the National Nuclear Security Administration Act, 50 U.S.C. 2401, *et seq.*

Issued in Washington, DC on May 14, 2004.

Lorretta D. Bryant,

Acting Director, Records Management Division, Office of the Chief Information Officer.

[FR Doc. 04–11522 Filed 5–20–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Docket No. EA–121–B]

Application To Export Electric Energy; Dynegy Power Marketing, Inc.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Dynegy Power Marketing, Inc. (DYPM), formerly Electric Clearinghouse, Inc. (ECI), has applied for renewal of its authority to transmit electric energy from the United States to Mexico pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before June 7, 2004.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Import/Export (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Xavier Puslowski (Program Office) 202–586–4708 or Michael Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: On February 24, 1997, the Office of Fossil Energy (FE) of the Department of Energy (DOE) authorized ECI to transmit electric energy from the United States to Mexico as a power marketer using the international electric transmission facilities of San Diego Gas & Electric Company, El Paso Electric Company, Central Power and Light Company, and Comision Federal de Electricidad, the national electric utility of Mexico. That two-year authorization expired on February 24, 1999. On June 24, 1999, in Order EA–121–A, FE renewed ECI's authority to export electric energy to Mexico for a 5-year term. That order will expire on June 24, 2004. On August 24, 1999, FE was notified that Electric Clearinghouse Inc. had changed its name to Dynegy Power Marketing Inc.

On May 13, 2004, DYPM applied to FE for a 5-year renewal of its authority to export electric energy to Mexico as a power marketer and requested expedited processing of its application to insure there is no lapse of export authority.

Procedural Matters: Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on DYPM request to export to Mexico should be clearly marked with Docket EA–121–B. Additional copies are to be filed directly with Betsy R. Carr, Sr. Director & Regulatory Counsel, and Steven F. Dalhoff, Director, Regulatory Affairs, Dynegy Power Marketing, Inc., 1000 Louisiana, Suite 5800, Houston, TX 77002–5050.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at *http://www.fe.doe.gov.* Upon reaching the Fossil Energy home page select "Electricity Regulation," and then "Pending Proceedings" from the options menus.

Issued in Washington, DC, on May 17, 2004.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Import/Export, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 04–11523 Filed 5–20–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meeting be announced in the **Federal Register.**

DATES: Wednesday, June 9, 2004, 6 p.m.

ADDRESSES: DOE Information Center, 475 Oak Ridge Turnpike, Oak Ridge, TN.

FOR FURTHER INFORMATION CONTACT: Pat Halsey, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831. Phone (865) 576–4025; Fax (865) 576–5333 or e-mail: *halseypj@oro.doe.gov* or check the Web site at *www.oakridge.doe.gov/em/ssab.*

SUPPLEMENTARY INFORMATION: Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: The meeting presentation will focus on the Stewardship Education Resource Kit. The kit is being developed by the Oak Ridge SSAB's Stewardship Committee to help area educators develop curricula on stewardship and environmental issues. The kit will feature a notebook

containing lesson plans, fact sheets, presentations, maps, and other educational materials. Also included will be a computer disk containing several environmental-related documents and a copy of the 40-page "Educational Resource Guide," which was developed by the SSAB last year.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Pat Halsey at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes of this meeting will be available for public review and copying at the Department of Energy's Information Center at 475 Oak Ridge Turnpike, Oak Ridge, TN between 8 a.m. and 5 p.m. Monday through Friday, or by writing to Pat Halsey, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831, or by calling her at (865) 576–4025.

Issued at Washington, DC, on May 17, 2004.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer

[FR Doc. 04–11521 Filed 5–20–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–225–001]

Columbia Gas Transmission Corporation; Notice of Compliance Filing

May 13, 2004.

Take notice that on May 7, 2004, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Twelfth Revised Sheet No. 281, a proposed effective date of April 22, 2004.

Columbia states that on March 23, 2004, it filed a revised tariff sheet regarding its right of first refusal provisions. On April 22, 2004, the Commission accepted Columbia's proposed revised tariff sheet subject to Columbia making certain tariff sheet revisions.

Columbia states that copies of its filing have been mailed to all firm customers, interruptible customers, and affected State commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1196 Filed 5–20–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–330–000]

Columbia Gas Transmission Corporation; Notice of Application

May 12, 2004.

Take notice that on May 7, 2004, Columbia Gas Transmission Corporation (Columbia) filed an application pursuant to section 7(b) of the Natural Gas Act. Columbia states that it is seeking authorization to abandon certain natural gas storage facilities in its Dundee Storage Field in Steuben County, New York.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214) on or prior to the comment date below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "e-Library" (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: June 3, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1197 Filed 5–20–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–226–001]

Columbia Gulf Transmission Company; Notice of Compliance Filing

May 13, 2004.

Take notice that on May 7, 2004, Columbia Gulf Transmission Company (Columbia Gulf), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Eighth Revised Sheet No. 145, with a proposed effective date of April 22, 2004.

Columbia Gulf states that on March 23, 2004, it filed a revised tariff sheet regarding its right of first refusal provisions. On April 22, 2004, the Commission accepted Columbia Gulf's proposed revised tariff sheet subject to Columbia Gulf making certain tariff sheet revisions.

Columbia Gulf states that copies of its filing have been mailed to all firm customers, interruptible customers, and affected State commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1183 Filed 5–20–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–361–017]

Gulfstream Natural Gas System, L.L.C.; Notice of Further Extension of Time

May 12, 2004.

On April 23, 2004, Gulfstream Natural Gas System, L.L.C. (Gulfstream) filed a motion for a further extension of time to comply with the Commission's Order (Order) issued December 24, 2003, in the above-docketed proceeding. The Commission's Order directed Gulfstream to revise and re-file the negotiated rate letter agreement with Calpine Energy Services, L.P. (Calpine), along with supplemental information, within 30 days of the date of the Order. The motion states that Gulfstream and Calpine have exchanged drafts of the revised agreement and anticipate that the parties will soon resolve all outstanding issues. Gulfstream requests additional time to address these issues and file the revised negotiated rate agreement and supplemental information.

On January 28, 2004, and February 25, 2004, the Commission issued notices extending the date for Gulfstream to file the revised agreement to February 23, 2004, and March 24, 2004, respectively. On March 25, 2004, the Commission issued a notice further extending the filing date to April 23, 2004. Upon consideration, notice is hereby given that a further extension of time for Gulfstream to file the revised agreement and supplemental information is granted to and including May 24, 2004, as requested by Gulfstream.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1195 Filed 5–20–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2574]

Merimil Limited Partnership; Notice of Authorization for Continued Project Operation

May 13, 2004.

On April 29, 2002, Merimil Limited Partnership, licensee for the Lockwood Project No. 2574, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2574 is located on the Kennebec River in Kennebec County, Maine.

The license for Project No. 2574 was issued for a period ending April 30, 2004. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2574 is issued to Merimil Limited Partnership for a period effective May 1, 2004, through April 30, 2005, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before May 1, 2005, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that Merimil Limited Partnership is authorized to continue operation of the Lockwood Project No. 2574 until such time as the Commission acts on its application for subsequent license.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1188 Filed 5–20–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

May 13, 2004.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Pulse flow protocol plan.

b. *Project No.:* 2188–097.

c. *Date Filed:* March 19, 2004.

d. *Applicant:* PPL Montana, Montana.

e. *Name of Project:* Missouri-Madison Project.

f. *Location:* The project is located on the Madison and Missouri Rivers in Gallatin, Madison, Lewis and Clark, and Cascade Counties, in southwestern Montana.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* John VanDaveer, PPL Montana LLC, 45 Basin Creek Road, Butte, MT 59701–9704.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Eric Gross at (202) 502–6213, or e-mail address: *eric.gross@ferc.gov.*

j. *Deadline for Filing Comments and or Motions:* June 14, 2004.

k. *Description of Request:* PPL Montana has filed for Commission approval of Pulse Flow Protocol Plan (PFPP) in accordance with Article 413 of the project license. Article 413 required the licensee to submit a pulse flow monitoring plan, by which the project would be operated and monitored for three years. The original plan was approved by order on December 7, 2001. The licensee has completed the required three years of monitoring and has now submitted the PFPP, which calibrates their pulse flow predictor model with the three years of collected thermal data. The licensee proposes to continue to use the statistical predictor model to regulate pulse flows and collect thermal data, and file an updated PFPP with a recalibrated model every five years for the remainder of the license.

l. Locations of Applications: A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1187 Filed 5–20–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–114–005]

Tennessee Gas Pipeline Company; Notice of Extension of Time

May 12, 2004.

On May 11, 2004, Tennessee Gas Pipeline Company (Tennessee) filed a motion for an extension of time to file supplemental information in response to a letter order issued May 3, 2004, in the above-docketed proceeding, by the Director, Division of Tariffs and Market Development-East. In support of this request, the motion states that Tennessee is working diligently to respond to the questions raised in the letter order and requires additional time to generate customer input and submit the required information.

Upon consideration, notice is hereby given that an extension of time for filing supplemental information in response to the May 3, 2004, Letter Order is granted to and including May 28, 2004, as requested by Tennessee.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1194 Filed 5–20–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2153]

United Water Conservation District; Notice of Authorization for Continued Project Operation

May 13, 2004.

On April 30, 2002, United Water Conservation District, licensee for the Santa Felicia Project No. 2153, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2153 is located on Piru Creek in Ventura County, California.

The license for Project No. 2153 was issued for a period ending April 30, 2004. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that

an annual license for Project No. 2153 is issued to United Water Conservation District for a period effective May 1, 2004, through April 30, 2005, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before May 1, 2005, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that United Water Conservation District is authorized to continue operation of the Santa Felicia Project No. 2153 until such time as the Commission acts on its application for subsequent license.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1186 Filed 5–20–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG04–66–000, et al.]

Indeck Maine Energy, L.L.C., et al.; Electric Rate and Corporate Filings

May 13, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Indeck Maine Energy, L.L.C.

[Docket No. EG04–66–000]

Take notice that on May 5, 2004, Indeck Maine Energy, L.L.C. (Indeck Maine), an Illinois limited liability company, with its principal executive office at 947 Linwood Avenue, Ridgewood, New Jersey 07450–2811, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations and section 32 of the Public Utility Holding Company Act of 1935, as amended.

Indeck Maine states that its facilities consists of two steam generators producing approximately 54 MW (gross) of electric capacity located in Maine. Indeck Maine further states that it will be engaged directly and exclusively in the business of owning and operating eligible facilities and selling electric energy at wholesale.

Indeck Maine states that copies of the application have been served on the Maine Public Utility Commission and the Securities and Exchange Commission.

Comment Date: May 26, 2004.

2. Entergy-Koch Trading, LP

[Docket No. ER01–2781–006]

Take notice that on April 23, 2004, Entergy-Koch Trading, LP (EKT) filed a document informing the Commission of a non-material change in the characteristics that the Commission relied upon in granting EKT market-based rate authorization under section 205 of the Federal Power Act.

Comment Date: May 21, 2004.

3. Westar Energy, Inc.

[Docket No. ER02–2516–001]

Take notice that on May 10, 2004, Westar Energy, Inc. (Westar) submitted a compliance filing to convert certain of its non-conforming rate schedules to Order No. 614 format and reflect the corporate name change to Westar.

Westar states that a copy of this filing was served upon the Kansas Corporation Commission and the affected customers.

Comment Date: June 1, 2004.

4. Pacific Gas and Electric Company

[Docket No. ER04–141–001]

Take notice that on May 11, 2004, Pacific Gas and Electric Company (PG&E) submitted an amendment to the rate revision filing PG&E submitted on October 31, 2003, in Docket No. ER04–141–000. PG&E states that the filing includes rate schedule sheet revisions to the Reliability Must-Run Service Agreement between PG&E and the California Independent System Operator Corporation (ISO) for Humboldt Bay Power Plant. PG&E requests an effective date of June 1, 2004.

PG&E states that copies of PG&E's filing have been served upon the ISO, the California Electricity Oversight Board, and the California Public Utilities Commission.

Comment Date: June 1, 2004.

5. Virginia Electric and Power Company

[Docket No. ER04–549–002]

Take notice that on May 10, 2004, Virginia Electric and Power Company, doing business as Dominion Virginia Power, tendered for filing Attachment O to its open-access transmission tariff, FERC Electric Tariff, Second Revised Volume No. 5 (OATT), containing revised Large Generator Interconnection Procedures (LGIP) and a revised Large Generator Interconnection Agreement (LGIA) in compliance with *Virginia Electric & Power Company*, 107 FERC ¶ 61,010 (2004) and Order No. 2003–A. Dominion Virginia Power requests that the Commission allow the revised LGIA and LGIP to become effective April 26, 2004.

Dominion Virginia Power states that copies of the filing were served upon the official service list in this proceeding, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment Date: June 1, 2004.

6. Virginia Electric and Power Company

[Docket No. ER04–558–001]

Take notice that, on May 7, 2004, Virginia Electric and Power Company (Dominion North Carolina Power) submitted a compliance filing pursuant to the Commission's letter order issued April 7, 2004, in Docket No. ER04–558–000.

Dominion North Carolina Power states that copies of the filing were served upon the Power Agency and the official service list in the above-captioned proceeding.

Comment Date: May 28, 2004.

7. PPL Electric Utilities Corporation

[Docket No. ER04–575–001]

Take notice that on May 7, 2004, PPL Electric Utilities Corporation (PPL Electric) filed a Service Agreement under the PJM Open Access Transmission Tariff between PPL Electric and Baltimore Gas and Electric Company (BG&E) in compliance with the Commission's letter order issued April 22, 2004, in Docket No. ER04–575–000 conditionally accepting the Agreement pending proper tariff designations in accordance with Order No. 614.

PPL Electric states that a copy of this filing has been provided to BG&E.

Comment Date: May 28, 2004.

8. EnergyWindow, Inc.

[Docket No. ER04–584–002]

Take notice that on May 4, 2004, EnergyWindow, Inc. (EnergyWindow) filed supplemental information regarding its February 19, 2004, and April 19, 2004, filings in Docket Nos. ER04–584–000 and 001 requesting Commission acceptance of EnergyWindow's Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

Comment Date: May 25, 2004.

9. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER04–738–001]

Take notice that on May 7, 2004, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) supplemented its April 15, 2004, Notice of Succession of Certain Transmission Service Agreements and Network Integration Transmission Service and Operating Agreements entered into by and between Ameren Services Company, as agent for its electric utility affiliates, Union Electric Company d/b/a AmerenUE and Central Illinois Public Service Company d/b/a AmerenCIPS (Ameren) and various transmission customers. Midwest ISO has requested an effective date of May 1, 2004.

The Midwest ISO states that it has served a copy of this filing upon the affected customers and has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, as well as all State commissions within the region. In addition, Midwest states that the filing has been electronically posted on the Midwest ISO's Web site at *http://www.midwestiso.org* under the heading "Filings to FERC" for other interested parties in this matter. Midwest ISO also states that it will provide hard copies to any interested parties upon request.

Comment Date: May 28, 2004.

10. South Carolina Electric & Gas Company

[Docket No. ER04–764–001]

Take notice that on May 10, 2004, South Carolina Electric & Gas Company (SCE&G) filed with the Commission a supplemental filing proposing revisions to its open access transmission-tariff (OATT) in order to incorporate certain revisions to the Large Generator Interconnection Procedures (LGIP). SCE&G states that the supplemental filing includes the entire LGIP and Large Generator Interconnection Agreement as part of its OATT.

Comment Date: June 1, 2004.

11. Maine Public Service Company

[Docket No. ER04–819–000]

Take notice that on April 30, 2004, Maine Public Service Company (MPS) submitted for filing an executed interconnection agreement between MPS and WPS New England Generation, Inc. (WPS). MPS requests an effective date of April 1, 2004, for the agreement.

MPS state that copies of this filing were served upon WPS, the Maine Public Service Commission, and the Maine Office of Public Advocate.

Comment Date: May 28, 2004.

12. GenWest LLC

[Docket No. ER04–820–000]

Take notice that on May 7, 2004, GenWest LLC (GenWest) tendered for filing, pursuant to section 205 of the Federal Power Act, Original Rate Schedule No. 2, a Co-Tenancy Agreement between GenWest and Southern Nevada Water Authority (SNWA).

GenWest states that copies of this filing have been served upon SNWA and the Public Utilities Commission of Nevada.

Comment Date: May 28, 2004.

13. Black Hills Power, Inc., Basin Electric Power Cooperative, and Powder River Energy Corporation

[Docket No. ER04–821–000]

Take notice that on May 7, 2004, Black Hills Power, Inc., (Black Hills Power) Basin Electric Power Cooperative, and Powder River Energy Corporation (collectively, Tranmission Providers) filed as part of their joint open access transmission tariff the Large Generator Interconnection Procedures and Large Generator Interconnection Agreement, each as promulgated in Order No. 2003–A. Joint Providers request an effective date of April 26, 2004.

Comment Date: May 28, 2004.

13. Florida Power Corporation

[Docket Nos. ER04–822–000 and ER04–823–000]

Take notice that on May 7, 2004, Florida Power Corporation, doing business as Progress Energy Florida (Florida Power) tendered for filing cost support updates for its interchange service agreements pursuant to part 35 of the Commission's regulations. Florida Power also filed revised rate schedule sheets incorporating necessary rate changes reflecting the cost updates. Florida Power states that the filing also updates the Real Power Loss Factors in the Open Access Transmission Tariffs (OATTs) of Florida Power and Carolina Power and Light Company (CP&L). In addition, consistent with Order No. 2003–A, Florida Power and CP&L are filing Attachment P to the joint OATT to add the large generator interconnection procedures (LGIP) and large generator interconnection agreement (LGIA) that were proposed in Order No. 2003–A. Florida Power requests an April 26, 2004, effective date for the filing of the LGIA and LGIP and a May 1, 2004, effective date for the revised interchange rate schedule sheets and updated loss factors.

Florida Power states that copies of the filing letter (which identifies the updated charges) have been served on the counter-parties to the interchange service agreements and the interested state utility commissions. Florida Power further states that the entire submittal has been posted on the Florida Power and Carolina Power & Light Company Web site at: *http://www.progress-energy.com.*

Comment Date: May 28, 2004.

14. PECO Energy Company

[Docket No. ER04–824–000]

Take notice that on May 7, 2004, PECO Energy Company (PECO Energy) tendered for filing revised pages of its interconnection agreement with Exelon Generation Company, LLC, to reflect revised points of interconnection for Richmond Generating Station. PECO Energy requests that the Commission accept the revised pages of the Interconnection Agreement for filing effective as of May 10, 2004.

Comment Date: May 28, 2004.

15. PECO Energy Company

[Docket No. ER04–825–000]

Take notice that on May 7, 2004, PECO Energy Company (PECO Energy) tendered for filing revised pages of its interconnection agreement with Exelon Generation Company, LLC, to reflect revised points of interconnection for Schuylkill Generating Station. PECO Energy requests that the Commission accept the revised pages of the Interconnection Agreement for filing effective as of May 10, 2004.

Comment Date: May 28, 2004.

16. Nxegen, Inc.

[Docket No. ER04–826–000]

Take notice that on May 10, 2004, Nxegen, Inc. (Nxegen) filed two Agreements for Supplemental Installed Capacity Southwest Connecticut between ISO New England, Inc. (ISO–NE) and Nxegen in compliance with the Commission's order issued February 27, 2004, in Docket No. ER04–335–000, *New England Power Pool*, 106 FERC 61,190 (2004). Nxegen requests action by May 10, 2004.

Nxegen states that copies of the filing were served on the ISO–NE.

Comment Date: June 1, 2004.

17. Tampa Electric Company

[Docket No. ER04–827–000]

Take notice that on May 10, 2004, Tampa Electric Company (Tampa

Electric) tendered for filing a notice of cancellation of the service agreement with Reliant Energy Services, Inc. (Reliant) under Tampa Electric's Market-Based Sales Tariff. Tampa Electric proposes that the cancellation be made effective on July 10, 2004.

Tampa Electric states that copies of the filing have been served on Reliant and the Florida Public Service Commission.

Comment Date: June 1, 2004.

18. Pacific Gas and Electric Company

[Docket No. ER04–828–000]

Take notice that on May 11, 2004, Pacific Gas and Electric Company (PG&E) tendered for filing the Special Facilities Agreement for the Newark Substation Circuit Breaker 460 and 470 Breaker Replacement (SFA) between PG&E and Silicon Valley Power (SVP). PG&E requests that the Commission make the SFA effective no later than May 18, 2004.

PG&E states that copies of this filing were served upon SVP, the California Independent System Operator, and the California Public Utilities Commission.

Comment Date: June 1, 2004.

19. PJM Interconnection, L.L.C., Virginia Electric and Power Company

[Docket No. ER04–829–000]

Take notice that on May 11, 2004, PJM Interconnection, L.L.C. (PJM) and Virginia Electric and Power Company (Dominion) jointly submitted a filing containing documents to establish PJM as the Regional Transmission Organization (RTO) for Dominion pursuant to an arrangement known as "PJM South." PJM and Dominion propose an effective date of the later to occur of November 1, 2004, and a date to be determined shortly after the date on which Dominion receives all necessary regulatory approvals to join PJM.

PJM and Dominion state that a copy of this filing was served on all State public utility commissions having jurisdiction over Dominion or over any of the existing PJM transmission owners, on all PJM members, and on Dominion's transmission customers, in addition to being posted on the PJM and PJM South websites.

Comment Date: June 1, 2004.

20. Entergy Services, Inc.

[Docket No. ER04–830–000]

Take notice that on May 11, 2004, Entergy Services, Inc., (Entergy) on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., filed proposed revisions to the Commission's Standard Large Generator Interconnection Procedures (LGIP) to incorporate Entergy's deliverability test for Network Resource Interconnection Service resources. Entergy also included its ministerial filing of the LGIP and Standard Large Generator Interconnection Agreement pursuant to Order No. 2003–A, *Standardization of Generator Interconnection Agreements and Procedures*, 106 FERC ¶ 61,220 (2004).

Comment Date: June 1, 2004.

21. Calpine Newark, LLC

[Docket No. ER04–831–000]

Take notice that on May 11, 2004, Calpine Newark, LLC (the Applicant) tendered for filing, under section 205 of the Federal Power Act (FPA), a request for authorization to make wholesale sales of electric energy, capacity, replacement reserves, and ancillary services at market-based rates, to reassign transmission capacity, and to resell firm transmission rights.

Comment Date: June 1, 2004.

22. Calpine Parlin, LLC

[Docket No. ER04–832–000]

Take notice that on May 11, 2004, Calpine Parlin, LLC (Parlin) filed an amendment to its FERC Rate Schedule No. 2 to permit the sale of replacement reserves and ancillary services, the reassignment of transmission capacity and the resale of firm transmission rights.

Comment Date: June 1, 2004.

23. Southwest Power Pool, Inc.

[Docket No. ER04–833–000]

Take notice that on May 11, 2004, Southwest Power Pool, Inc. (SPP) submitted to the Commission a revision to its regional Open Access Transmission Tariff (OATT) to provide for an experimental Transmission Service Prepayment procedure. SPP states that the experimental program is to remain in place for one year, unless extended by further authorization of the Commission. SPP requests an effective date of July 1, 2004, for this program so that it will be in effect for the period of July 1, 2004, through June 30, 2005.

SPP states that it has served a copy of its transmittal letter on each of its Members and Customers, as well as on all generators in existing generation queue. SPP further states that a complete copy of this filing will be posted on the SPP Web site *http://www.spp.org*, and is also being served on all affected State commissions.

Comment Date: June 1, 2004.

24. Virginia Electric and Power Company

[Docket No. ER04–834–000]

Take notice that on May 11, 2004, Virginia Electric and Power Company (Dominion) submitted amendments to its market-based rate tariffs to eliminate the restriction on sales within Dominion's service territory, effective on the date that Dominion integrates its transmission facilities into the PJM Interconnection, L.L.C.

Dominion states that it is serving a complete copy of the filing on the Virginia and North Carolina State public utility commissions and on all customers under the two Dominion market-based rate tariffs. In addition, Dominion states that the entire filing is being posted on the PJM South Web site.

Comment Date: June 1, 2004.

25. California Independent System Operator Corporation

[Docket No. ER04–835–000

Take notice that the California Independent System Operator Corporation (ISO) tendered for filing Amendment No. 60 to the ISO Tariff, for acceptance by the Commission. The ISO states that the purposes of Amendment No. 60 are to (1) propose the use of a Security-Constrained Unit Commitment (SCUC) application to minimize must-offer commitment costs; (2) revise the gas cost proxy used in the Minimum Load Cost Compensation (MLCC) payment and Start-Up payments; (3) include auxiliary power as a recoverable Start-Up cost; (4) eliminate the current practice of rescinding MLCC payments when a unit provides Ancillary Services; (5) revise the timing of the must-offer waiver denial process to facilitate bidding into the Day-Ahead Ancillary Services markets; (6) clarify Self-Commitment and its implications on MLCC payment; (7) revise how MLCC costs are allocated; and (8) establish a framework for using Condition 2 RMR Units outside of the Reliability Must-Run (RMR) Contract.

The ISO states that it has served copies of this letter, and all attachments, on the California Public Utilities Commission, the California Energy Commission, the California Electricity Oversight Board, on all parties with effective Scheduling Coordinator Service Agreements under the ISO Tariff, and on all parties on the official service list for Docket Nos. EL00–95 and EL00–98. In addition, the ISO states that it is posting this transmittal letter and all attachments on the ISO home page.

Comment Date: June 1, 2004.

26. Total Gas & Electricity, Inc.

[Docket No. ER04–836–000]

Take notice that on May 12, 2004, Total Gas & Electricity, Inc. (TG&E) filed a notice of succession of TG&E's FERC Rate Schedule No. 1 to MxEnergy Electric Inc., effective March 31, 2004.

Comment Date: June 2, 2004.

27. Total Gas & Electricity (PA), Inc.

[Docket No. ER04–837–000]

Take notice that on May 12, 2004, Total Gas & Electricity (PA), Inc. (TG&E PA) filed a notice of succession of TG&E PA's FERC Rate Schedule No. 1 to MXEnergy Electric Inc., effective March 31, 2004.

Comment Date: June 2, 2004.

28. Consumers Energy Company

[Docket No. ES04–31–000]

Take notice that on May 10, 2004, Consumers Energy Company submitted an application pursuant to section 204 of the Federal Power Act requesting that the Commission authorize the issuance of secured and unsecured short-term securities in an amount not to exceed $2.2 billion.

Comment Date: June 2, 2004.

29. Consumers Energy Company

[Docket No. ES04–32–000]

Take notice that on May 10, 2004, Consumers Energy Company (Consumers) submitted an application pursuant to section 204 of the Federal Power Act requesting that the Commission authorize the issuance of secured and unsecured long-term securities in an amount not to exceed $5.0 billion.

Consumers also requests a waiver from the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Comment Date: June 2, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary

[FR Doc. E4–1182 Filed 5–20–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG04–67–000, et al.]

Meiya Yulchon Power Company Limited, et al.; Electric Rate and Corporate Filings

May 11, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Meiya Yulchon Power Company Limited

[Docket No. EG04–67–000]

On May 7, 2004, Meiya Yulchon Power Company Limited (MYP), with its principal office at 171 Old Bakery Street, Valletta, Malta, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

MYP states that it is a company organized under the laws of Malta. MYP further states that it will be engaged, directly or indirectly through an affiliate as defined in section 2(a)(11)(B) of the Public Utility Holding Company Act of 1935 ("PUHCA"), exclusively in owning, operating, or both owning and operating, a gas-fired electric generating facility with a total output of approximately 612 megawatts consisting of two combustion turbine generators, two reheat heat recovery steam generators, one condensing steam turbine generator and certain additional incidental facilities, located in Yulchon, Cholla province, South Korea. MYP indicates that it will through an affiliate sell electric energy at wholesale from the facility and may engage in other incidental activities with respect thereto consistent with PUHCA.

Comment Date: May 28, 2004.

2. Ivanpah Energy Center, L.P.

[Docket No. EG04–68–000]

On May 10, 2004, Ivanpah Energy Center, L.P. (IECLP), a Delaware limited liability partnership, with its principal place of business at 333 S. Grand Avenue, Suite 1570, Los Angeles, CA 90071, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator (EWG) status pursuant to part 365 of the Commission's regulations.

IECLP states that it will be engaged directly and exclusively in the business of owning or operating, or both owning and operating, a 500 MW gas-fired combined cycle power generation facility located near Jean, in Clark County, Nevada. IECLP further states that it will sell the capacity exclusively at wholesale.

IECLP indicates that a copy of the filing was served upon the Securities and Exchange Commission, and the Nevada Public Utilities Commission.

Comment Date: June 1, 2004.

3. Colorado River Commission of Nevada, Complainant v. Nevada Power Company, Respondent

[Docket No. EL04–100–000]

Take notice that on May 10, 2004, the Colorado River Commission of Nevada (CRC) filed a formal complaint against Nevada Power Company (NPC) pursuant to sections 206, 306 and 309 of the Federal Power Act, 16 U.S.C. 824e, 825e and 825h (2000), and rule 206 of the Federal Energy Regulatory Commission's rules of practice and procedure, 18 CFR 385.206 (2003), for amounts CRC alleges are due to CRC for positive imbalance energy that NPC either unlawfully confiscated or underpaid in contravention of the filed rate encompassed within its Electric Service Coordination Tariff (Coordination Tariff) and unfiled letter agreements entered into pursuant to the Coordination Tariff. CRC further alleges that NPC owes it time value refunds for FERC-jurisdictional energy parking services NPC provided to CRC pursuant to unfilled agreements.

Comment Date: June 1, 2004.

4. PacifiCorp

[Docket No. ER04–439–001]

Take notice that on May 5, 2004, PacifiCorp submitted a compliance filing pursuant to the Commission's

letter order issued March 19, 2004, in Docket No. ER04–439–000.

PacifiCorp states that copies of this filing were supplied to the parties on the service list under Docket No. ER04–439–000 including the Public Utility Commission of Oregon, and the Washington Utilities and Transportation Commission.

Comment Date: May 26, 2004.

5. Tucson Electric Power Company and UNS Electric, Inc.

[Docket No. ER04–460–001]

Take notice that on May 5, 2004, Tucson Electric Power Company and UNS Electric, Inc., in response to the Commission's April 20, 2004 deficiency letter, filed an amendment to its January 20, 2004, in Docket No. ER04–460–000.

Comment Date: May 26, 2004.

6. Entergy Services, Inc.

[Docket No. ER04–763–001]

Take notice that on May 5, 2004, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing an errata to its April 26, 2004, filing of proposed regional reliability variations to the Large Generator Interconnection Procedures accompanying Order No. 2003–A, *Standardization of Generator Interconnection Agreements and Procedures,* 106 FERC ¶ 61,220 (2004). Entergy Operating Companies states that the errata identifies certain tariff sheets that were inadvertently included in Entergy's April 26, 2004, filing.

Comment Date: May 26, 2004.

7. Vermont Electric Cooperative, Inc.

[Docket No. ER04–794–000]

Take notice that on May 3, 2004, Vermont Electric Cooperative, Inc. (VEC) tendered for filing its annual formula rate update to its FERC Electric Tariff, Original Volume No. 1 and its First Revised Rate Schedule FERC Nos. 4 through 7. VEC requests effective dates for its annual update of May 1, 2004, June 1, 2004, and July 1, 2004, pursuant to the applicable provisions of the Tariff and the Rate Schedules.

VEC states that each of the customers receiving service under the Tariff and Rate Schedules, the Vermont Public Service Board, and the Vermont Department of Public Service were mailed copies of the filing.

Comment Date: May 24, 2004.

8. PJM Interconnection, L.L.C.

[Docket No. ER04–796–001]

Take notice that on May 5, 2004, PJM Interconnection, L.L.C. (PJM), amended its April 30, 2004, filing in Docket No. ER04–796–000 to include the appropriate Order No. 614 designations on an unexecuted service agreement for non-firm point-to-point transmission service with Exelon Generation Company, L.L.C. (ExGen), for use solely in connection with a dynamic schedule, in an amount not to exceed 35 MW, to the Hannibal, Ohio facility of Ormet Primary Aluminum Corporation. PJM states that no other changes were made to the service agreement.

PJM states that copies of this filing were served to ExGen and the state commissions in the PJM region.

Comment Date: May 26, 2004.

9. Ameren Services Company

[Docket No. ER04–803–000]

Take notice that on May 3, 2004, Ameren Services Company (ASC) tendered for filing an executed Network Integration Transmission Service and a Network Operating Agreement between ASC and Wayne-White Counties Electric Cooperative. ASC requests an effective date of April 1, 2004.

Comment Date: May 24, 2004.

10. Denver City Energy Associates, L.P.

[Docket No. ER04–809–000]

Take notice that on May 3, 2004, Denver City Energy Associates, L.P. (DCE), tendered for filing revisions to its FERC Electric Tariff, Original Volume No. 1 in order to reflect the fact that DCE is no longer affiliated with any regulated utility with a franchised service territory and to include the standard provision governing reassignment of transmission capacity. DCE requests an effective date of July 2, 2004.

DCE states that a copy of the filing was served on Golden Spread Electric Cooperative, Inc., which is currently DCE's only customer.

Comment Date: May 24, 2004.

11. TransAlta Centralia Generation L.L.C.

[Docket No. ER04–810–000]

Take notice that on May 3, 2004, TransAlta Centralia Generation L.L.C. (TACG) tendered for filing its Rate Schedule FERC No.1 for Reactive Supply and Voltage Control from Generation Sources Services (Reactive Power Service), in order to obtain compensation for the Reactive Power Service that TACG provides to Bonneville Power Administration (Bonneville) to maintain the reliability of the Federal Columbia River Transmission System operated by Bonneville.

TACG states that it has served a copy of the filing upon Bonneville.

Comment Date: May 24, 2004.

12. Duke Energy Marketing America, LLC

[Docket No. ER04–811–000]

Take notice that on May 4, 2004, Duke Energy Marketing America, LLC (DEMA), as successor to Engage Energy, LLC (Engage) filed a Notice of Cancellation of Engage's Electric Rate Schedule FERC No. 1. DEMA requests an effective date of May 1, 2004.

Comment Date: May 25, 2004.

13. Duke Energy Corporation

[Docket No. ER04–812–000]

Take notice that on May 3, 2004, Duke Energy Corporation, on behalf of Duke Electric Transmission, tendered for filing in compliance with Order No. 2003–A, *Standardization of Generator Interconnection Agreements and Procedures,* 106 FERC ¶ 61,220 (2004), its revised Open Access Transmission Tariff (OATT), FERC Electric Tariff Third Revised Volume No. 4.

Comment Date: May 24, 2004.

14. Vermont Electric Cooperative, Inc.

[Docket No. ER04–813–000]

Take notice that on May 4, 2004, Vermont Electric Cooperative, Inc. (VEC) tendered for filing as Service Agreement No. 14 under VEC's FERC Electric Tariff, Original Volume No. 1, a small generator interconnection agreement with Great Bay Hydro Corporation (Great Bay). VEC requests an effective date of April 1, 2004.

VEC states that representatives of Great Bay, Citizens Communication Company, the Vermont Public Service Board, and the Vermont Department of Public Service were mailed copies of the filing.

Comment Date: May 25, 2004.

15. New England Power Company

[Docket No. ER04–814–000]

Take notice that on May 4, 2003, New England Power Company (NEP) submitted for filing First Revised Service Agreement No. 35 between NEP and Central Vermont Public Service Corporation (CVPS) under NEP's open access transmission tariff, New England Power Company, FERC Electric Tariff, Second Revised Volume No. 9. NEP requests an effective date of April 29, 2004.

NEP states that copies of the filing were served on CVPS and state regulators in Vermont.

Comment Date: May 25, 2004.

16. Alabama Power Company

[Docket No. ER04–815–000]

Take notice that on May 5, 2004, Alabama Power Company filed a Transmission Facilities Agreement between Alabama Power Company and Georgia Power Company, dated April 28, 2004. Alabama Power Company states that the parties entered into this transmission facilities agreement in order to properly allocate the costs of certain transmission upgrades to Alabama Power Company's transmission system.

Comment Date: May 26, 2004.

17. Sierra Pacific Resources Operating Companies

[Docket No. ER04–816–000]

Take notice that on May 5, 2004, Sierra Pacific Resources Operating Companies tendered for filing an amendment to section 17.7 of its Open Access Transmission Tariff to implement procedures for addressing requests to extend the commencement of service over transmission facilities constructed to accommodate a new service request.

Comment Date: May 26, 2004.

18. Indeck Maine Energy, L.L.C.

[Docket No. ER04–817–000]

Take notice that on May 5, 2004, Indeck Maine Energy, L.L.C. (Indeck Maine) tendered for filing, under section 205 of the Federal Power Act, a request for authorization to sell electricity at market-based rates under its proposed market-based tariff. Indeck Maine requests an effective date of May 14, 2004.

Comment Date: May 26, 2004.

19. Pierce Power, LLC

[Docket No. ER04–818–000]

Take notice that on May 5, 2004, Pierce Power, LLC (Pierce Power)tendered for filing a Notice of Cancellation of its market-based rate authority. Pierce Power request that the termination to be effective September 30, 2002.

Comment Date: May 26, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1198 Filed 5–20–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 8615–024]

Consolidated Water Power Company; Notice of Availability of Environmental Assessment

May 13, 2004.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has prepared an Environmental Assessment (EA) for an application requesting Commission approval of license surrender and dam removal for the Fiske Mill Hydroelectric Project. The project is located on the Ashuelot River in the town of Hinsdale, Cheshire County, New Hampshire.

The EA contains the staff's analysis of the potential environmental impacts of the project and concludes that the surrender of project license and dam removal would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA is available for review and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426. The EA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number (prefaced by P-) in the docket number field to access the document. For assistance, contact FERC On-Line Support at *FERCOnlineSupport@ferc.gov* or call toll free at (866) 208–3676, or for TTY contact (202) 502–8659.

Any comments should be filed by June 14, 2004, and should be addressed to Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix "Fiske Mill Project No. 8615–024," to all comments. For further information, please contact Andrea Shriver at (202) 502–8171, or *andrea.shriver@ferc.gov*.

Comments may be filled electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1192 Filed 5–20–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Piney Hydroelectric Project No. 309–036 Pennsylvania]

Reliant Energy Mid-Atlantic Power Holdings, LLC; Notice of Availability of Environmental Assessment

May 13, 2004.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects (staff) has reviewed the application for a new major license for the Piney Project, located on the Clarion River in Clarion County, Pennsylvania, and prepared an environmental assessment (EA) for the project.

In this EA, staff analyzes the potential environmental effects of the existing project and concludes that licensing the project, with staff's recommended measures, would not constitute a major federal action significantly affecting the quality of the human environment.

A copy of the EA and application is available for review at the Commission

in the Public Reference Room, or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "e-Library" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. Register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any comments should be filed within 30 days from the date of this notice and should be addressed to Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix "Piney Project No. 309–036" to all comments. For further information, please contact John Costello by e-mail at *john.costello@ferc.gov* or phone 202–502–6119.

The Commission strongly encourages electronic filings. Comments may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1189 Filed 5–20–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 516–379]

South Carolina Gas & Electric Company; Notice of Availability of Draft Environmental Assessment

May 13, 2004.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed South Carolina Gas & Electric Company's application requesting authorization to permit Boulevard Partners, Inc. use of Saluda Project lands and waters. The permit would authorize the installation of a concrete boat ramp and a multi-boat dock facility capable of berthing 32 boats. The proposed work would take place at a residential community to be known as Lakeside at Ballentine located on Lake Murry, Ballentine, Richland County, South Carolina. A Draft Environmental Assessment (DEA) has been prepared for the proposal.

The DEA contains the staff's analysis of the potential environmental impacts of the project and concludes that approving the request would not constitute a major Federal action significantly affecting the quality of the human environment.

A copy of the DEA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number P–516 to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, (202) 502–8659.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any comments should be filed within 30 days from the date of this notice and should be addressed to Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix Project No. P–516–379 to all comments. Comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link. For further information, contact Jean Potvin at (202) 502–8928.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1191 Filed 5–20–04;8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF04–3–000 and PF04–9–000]

Vista del Sol LNG Terminal LP and Vista del Sol Pipeline LP; Ingleside Energy Center LLC and San Patricio Pipeline LLC; Notice of Intent To Prepare Environmental Impact Statements for the Proposed Vista Del Sol LNG Terminal Project and the Ingleside Energy Center LNG Terminal and Pipeline Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meeting

May 13, 2004.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) that will discuss the environmental impacts of Vista del Sol LNG Terminal LP's and Vista del Sol Pipeline LP's (affiliates of the ExxonMobil Corporation that are collectively referred to as Vista del Sol) proposed Vista del Sol LNG Terminal Project. In addition, the staff of the FERC will prepare a separate EIS that will discuss the environmental impacts of Ingleside Energy Center LLC's and San Patricio Pipeline LLC's (collectively referred to as Ingleside San Patricio) proposed Ingleside Energy Center LNG Terminal and Pipeline Project. This notice explains the scoping process we [1] will use to gather input from the public and interested agencies on the projects. Your input will help us determine which issues need to be evaluated in each EIS. Please note that the scoping period for both projects will close on June 18, 2004.

Due to the similarity between the projects, which include geography, potential impacts, and affected parties, we have decided to issue a joint notice. This joint notice eliminates the redundancy and costs of duplicate mailings. In addition, we wish to provide convenience to interested parties by holding a single joint public scoping meeting.

Comments may be submitted by electronic submission, in written form, or verbally. Further details on how to submit comments are provided in the public participation section of this notice. In lieu of sending comments, we invite you to attend the public scoping meeting we have scheduled as follows: Wednesday, June 9, 2004, 7 p.m. (c.s.t.), Vista del Sol LNG Terminal Project, and

[1] "We," "us," and "our" refer to the environmental staff of the Office of Energy Projects.

Ingleside Energy Center LNG Terminal and Pipeline Project, Portland Community Center, 2000 Billy G Webb, Portland, TX 78374, telephone: (361) 777–3301.

In addition, on Wednesday, June 9, 2004, starting at 8 a.m. (c.s.t.), we will be conducting a visit to the Ingleside Energy Center LNG site and along the pipeline route. Anyone interested in participating in the site visit should meet at the lobby of the Comfort Inn, 1703 N Highway 181, Portland, Texas 78374. Participants must provide their own transportation. For additional information, please contact the Commission's Office of External Affairs at (866) 208–FERC (3372).

The FERC will be the lead Federal agency in the preparation of each EIS. The documents will satisfy the requirements of the National Environmental Policy Act (NEPA).

This notice is being sent to affected landowners; Federal, State, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers. We encourage government representatives to notify their constituents of these planned projects and encourage them to comment on their areas of concern.

Summary of the Proposed Vista del Sol LNG Terminal Project

Vista del Sol proposes to construct and operate an LNG import terminal and a natural gas pipeline to provide a new supply of competitively priced natural gas to Texas and other U.S. domestic markets. The LNG import terminal would be situated between the Sherwin Alumina and DuPont industrial facilities on the La Quinta Ship Channel between Ingleside and Portland, Texas. The proposed pipeline, extending from the LNG terminal to a site near Sinton, Texas, would transport natural gas to market via interconnections with a number of existing interstate and intrastate pipeline systems. The general location of the facilities is shown in appendix 1.[2] The Vista del Sol LNG Terminal Project would include:

- A berthing structure and unloading facilities for LNG carrier ships;
- Three LNG storage tanks, each with a nominal working volume of approximately 160,000 cubic meters (1,006,400 barrels equivalent), surrounded by an earthen barrier;
- Vaporization facilities including water intake and discharge equipment;
- 25 miles of 36-inch-diameter natural gas pipeline; and
- Up to seven interconnects with existing intrastate and interstate pipelines.

Vista del Sol proposes to have the project constructed and operational in mid-2008.

The project would nominally deliver about 1 billion cubic feet of natural gas per day. In the event that additional markets are identified, project facilities could be expanded to increase LNG storage and natural gas delivery capacities. ExxonMobil Corporation and Qatar Petroleum recently signed an agreement to supply about 2 billion cubic feet per day of natural gas as LNG from Qatar to the United States for an expected period of 25 years. Some of this LNG could be used to supply the Vista del Sol terminal.

Summary of the Proposed Ingleside Energy Center LNG Terminal and Pipeline Project

Ingleside San Patricio proposes to construct and operate an LNG terminal and a natural gas pipeline to provide a new supply of competitively priced natural gas to meet the increased demand in the U.S. The proposed terminal site is bounded by the La Quinta Waterway to the south, the Occidental Chemical industrial facility to the west, and the U.S. Navy and a private landowner to the east. The proposed pipeline would extend from the LNG terminal to an interstate interconnection near Sinton, Texas. The general location of the facilities is shown in appendix 1.[3] The Ingleside Energy Center LNG Terminal and Pipeline Project would include:

- A berthing structure and unloading facilities for LNG carrier ships;
- Two LNG storage tanks, each with a nominal working volume of approximately 160,000 cubic meters (1,006,400 barrels equivalent);
- Vaporization and natural gas liquids removal equipment;
- 26 miles of 26-inch-diameter natural gas pipeline; and
- Up to 12 interconnects with existing intrastate and interstate pipelines.

The project would have a nominal output of about 1 billion cubic feet of natural gas per day and, as proposed, would be integrated with the adjacent chemical manufacturing complex in order for the two facilities to offset the other's respective heating and cooling needs. The use of the chemical manufacturing complex's cooling water as a source of vaporization heat is expected largely to eliminate air emissions from the terminal and at the same time to conserve approximately two million gallons of fresh water presently used in cooling water evaporation each day.

The EIS Process

The FERC will use the EISs to consider the environmental impact that could result if it issues Vista del Sol and/or Ingleside San Patricio project authorizations under sections 3 and 7 of the Natural Gas Act.

This notice formally announces our preparation of the EISs and invites your input into the process referred to as "scoping." We are soliciting input from the public and interested agencies to help us focus the analysis in each EIS on the potentially significant environmental issues related to the proposed actions.

Our independent analysis of the issues for each project will be included in each draft EIS. The draft EISs will be mailed to Federal, State, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; affected landowners; other interested parties; local libraries and newspapers; and the FERC's official service lists for these proceedings. A 45-day comment period will be allotted for review of the draft EISs. We will consider all comments on the draft EISs and revise the documents, as necessary, before issuing final EISs.

Although no formal applications have been filed, the FERC staff has already initiated its NEPA review under its NEPA Pre-filing Process. The purpose of the Pre-filing Process is to encourage the early involvement of interested stakeholders and to identify and resolve issues before an application is filed with the FERC.

With this notice, we are asking Federal, State, and local agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EISs. These agencies may choose to participate once they have evaluated the proposals relative to their responsibilities. Agencies that would like to request cooperating status should follow the instructions for filing comments provided under the Public

[2] The appendix referenced in this notice is not being printed in the **Federal Register**. Copies of the appendix were sent to all those receiving this notice in the mail. Requests for detailed maps of the proposed facilities should be made directly to Vista del Sol (see *http://www.vistadelsolllng.com* for contact information).

[3] The appendix referenced in this notice is not being printed in the **Federal Register**. Copies of the appendix were sent to all those receiving this notice in the mail. Requests for detailed maps of the proposed facilities should be made directly to Ingleside San Patricio (*http://www.inglesideenergycenter.com* will be available soon for contact information).

Participation section of this Notice. Thus far, the U.S. Coast Guard, the Research and Special Programs Administration (Office of Pipeline Safety), and the National Marine Fisheries Service (NOAA Fisheries) have agreed to be cooperating agencies for these projects.

Currently Identified Environmental Issues

Each EIS will discuss impacts that could occur as a result of the construction and operation of the proposed projects. We have already identified several issues that we think deserve attention based on a preliminary review of the project sites and the facility information provided by Vista del Sol and Ingleside San Patricio. This preliminary list of issues may be changed based on your comments and our analysis. The following issues pertain to both projects:

- Dredged material management.
- Potential impacts on water quality from dredging activities.
- Impacts on wetlands and submerged aquatic vegetation.
- Impacts on essential fish habitat and State and/or federally-listed threatened and endangered species at the LNG terminal and along the pipeline route.
- Consistency with coastal zone management guidelines.
- Visual impacts associated with new LNG storage tanks.
- Environmental justice issues associated with the location of the LNG terminal.
- Impact and potential benefits of construction workforce on local housing, infrastructure, public services, and economy.
- Impacts of LNG ship traffic on the Port of Corpus Christi and the Port Aransas ferry schedule.
- Assessment of potential cultural resources at the LNG terminal and along the pipeline route.
- Native American concerns.
- Impacts of construction and operation of the LNG terminal and the natural gas pipeline on local air quality.
- Hazards associated with the transport, unloading, storage, and vaporization of LNG.
- Security associated with LNG ship traffic and an LNG import terminal.
- Alternative sites for the LNG terminal, including offshore sites, and pipeline route alternatives.
- Assessment of the effect of the proposed project when combined with other past, present, or reasonably foreseeable future actions in the project area, including other proposed LNG facilities in Corpus Christi Bay and the proposed Port of Corpus Christi La Quinta Container Terminal.

The following issues have been identified for the Vista del Sol LNG Terminal Project:

- Potential impacts from a thermal (cold water) discharge.
- Impacts on marine life from the seawater intake.
- Alternative LNG vaporization technologies.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the proposals. Your comments should focus on the potential environmental effects, reasonable alternatives (including alternative terminal sites and pipeline routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. To expedite our receipt and consideration of your comments, the Commission strongly encourages electronic submission of any comments on this project. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link and the link to the User's Guide. Before you can submit comments you will need to create a free account, which can be created by clicking on "Login to File" and then "New User Account." You will be asked to select the type of submission you are making. This submission is considered a "Comment on Filing."

If you wish to mail comments, please mail your comments so that they will be received in Washington, DC on or before June 18, 2004, and carefully follow these instructions:

Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;

- Label one copy of your comments for the attention of Gas Branch 3;
- Reference Docket No. PF04–3–000 (Vista del Sol) or PF04–9–000 (Ingleside Energy Center) on the original and both copies.

The public scoping meeting to be held on June 9, 2004, at the Portland Community Center is designed to provide another opportunity to offer comments on the proposed projects. Interested groups and individuals are encouraged to attend the meeting and to present comments on the environmental issues they believe should be addressed in each EIS. A transcript of the meeting will be generated so that your comments will be accurately recorded.

We will include all comments that we receive within a reasonable time frame in our environmental analysis of these projects.

Once Vista del Sol and Ingleside San Patricio formally file their applications with the Commission, you may want to become an official party to the proceedings known as an "intervenor." Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in a Commission proceeding by filing a request to intervene. Instructions for becoming an intervenor are included in the User's Guide under the "e-filing" link on the Commission's web site. Please note that you may not request intervenor status at this time. You must wait until a formal application is filed with the Commission.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Availability of Additional Information

Additional information about the projects is available from the Commission(s Office of External Affairs at 1–866–208 FERC (3372) or on the FERC Internet website (*http://www.ferc.gov*). Using the "eLibrary" link, select "General Search" from the eLibrary menu, enter the selected date range and "Docket Number" (*i.e.*, PF04–3–000 or PF04–9–000), and follow the instructions. Searches may also be done using the phrase (Vista del Sol LNG(or "Ingleside Energy Center" in the (Text Search(field. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ ferc.gov*. The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

In addition, the FERC now offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. To register for this service, go to *http://www.ferc.gov/esubscribenow.htm*.

Finally, Vista del Sol has established an Internet Web site for its project at

http://www.vistadelsollng.com and Ingleside San Patricio will establish an Internet Web site for its project at *http://www.inglesideenergycenter.com*. The Web sites will include a description of the project, maps of the proposed site, and links to related documents.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1193 Filed 5–20–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

May 13, 2004.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of license.

b. *Project No.:* 2035–039.

c. *Date Filed:* April 22, 2004.

d. *Applicant:* Denver Water, Colorado.

e. *Name of Project:* Gross Reservoir Project.

f. *Location:* The project is located on South Boulder Creek in Boulder County, Colorado.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* James Weldon, Denver Water, 1600 West 12th Avenue, Denver, CO 80204–3412.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Eric Gross at (202) 502–6213, or e-mail address: *eric.gross@ferc.gov.*

j. *Deadline for Filing Comments and or Motions:* June 14, 2004.

k. *Description of Request:* Denver Water has submitted a capacity-related license amendment application for its Gross Reservoir Project No. 2035. Denver Water proposes to increase the authorized capacity of the project from 5 MW to 7.6 MW, with a corresponding 85 cubic feet per second increase in hydraulic capacity. The proposal also involves relocating the proposed powerhouse site from an existing valve house to a location approximately 440 feet downstream. The relocation will require the construction of a new 580-foot, 60-inch diameter penstock and a new 25–kV transmission line that will follow the path of an existing 4.16–kV line. All of the proposed changes will take place within the licensed project boundary.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1185 Filed 5–20–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 459–128]

Union Electric Company (d/b/a AmerenUE); Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

May 13, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New major license.

b. *Project No.:* 459–128.

c. *Date Filed:* February 24, 2004.

d. *Applicant:* Union Electric Company (d/b/a AmerenUE).

e. *Name of Project:* Osage Hydroelectric Project.

f. *Location:* On the Osage River, in Benton, Camden, Miller and Morgan Counties, central Missouri. The project occupies 1.6 acres of Federal land.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Jerry Hogg, Superintendent Hydro Regulatory Compliance, AmerenUE, 617 River Road, Eldon, MO 65026; telephone (573) 365–9315; e-mail *jhogg@ameren.com.*

i. *FERC Contact:* Allan Creamer at (202) 502–8365; or e-mail at *allan.creamer@ferc.gov.*

j. *Deadline for Filing Motions to Intervene and Protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Motions to intervene and protests may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions

on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link. The Commission strongly encourages electronic filing. The Commission's rules of practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted, but is not ready for environmental analysis at this time.

l. *Project Description:* The existing project consists of: (1) A 2,543-foot-long, 148-foot-high dam comprised of, from right to left, (i) A 1,181-foot-long, non-overflow section, (ii) a 520-foot-long gated spillway section, (iii) a 511-foot-long intake works and powerhouse section, and (iv) a 331-foot-long non-overflow section; (2) an impoundment (Lake of the Ozarks), approximately 93 miles in length, covering 54,000 acres at a normal full pool elevation of 660 feet mean sea level; (3) a powerhouse, integral with the dam, containing eight main generating units (172 MW) and two auxiliary units (2.1 MW each), having a total installed capacity of 176.2 MW; and (4) appurtenant facilities. The project generates an average of 636,397 megawatt-hours of electricity annually.

AmerenUE currently operates, and is proposing to continue to operate, the Osage Project as a peaking and load regulation facility. AmerenUE proposes to upgrade two of the facility's eight main generating units and the two smaller, auxiliary generating units. With the proposed upgraded units, energy generation is estimated to increase by about 5.6 percent. In addition to the physical plant upgrades, AmerenUE proposes a variety of environmental and recreation measures.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number, excluding the last three digits in the docket number field (P–459), to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must: (1) Bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1190 Filed 5–20–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–1656–017]

California Independent System Operator Corporation; Notice Establishing Due Date for Comments and Electronic Service Option

May 12, 2004.

The Federal Energy Regulatory Commission is seeking comments from interested participants in response to the Comments of the California Independent System Operator Corporation regarding Technical Conference filed by the California Independent System Operator Corporation (CAISO) on May 11, 2004, in this docket.

Interested participants are invited to submit information and comments in response to the CAISO's filing by no later than 5 p.m. (e.s.t.) on Wednesday, May 19, 2004.

Interested participants will have the option of serving their comments on other participants by means of an electronic list established by the Federal Energy Regulatory Commission. To choose this option, the instructions set out in the attachment to this notice must be followed.

Please note that use of the electronic service option does not relieve any participant of the requirement to:

1. File comments or other submissions in this docket with the Commission in accordance with filing procedures; and

2. Serve participants who are not registered on the electronic list.

The electronic list is intended to reduce the time and expense associated with service of documents on participants in this proceeding.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1184 Filed 5–20–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Final Procedures for Distribution of Remaining Crude Oil Overcharge Refunds

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of final procedures for distribution of remaining crude oil overcharge refunds.

SUMMARY: This document provides the text of procedures that will govern the final round of payments to successful claimants in the crude oil overcharge refund proceeding by the Department of Energy (DOE) Office of Hearings and Appeals (OHA). Two important issues addressed are the computation of the per-gallon "volumetric" refund amount, and the mechanics of the refund application process.

DATES: All required information must be submitted between July 1 and December 31, 2004.

ADDRESSES: Inquiries should be submitted electronically to *crudeoilrefunds@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Tami L. Kelly, Secretary, or Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, Department of Energy; telephone: 202–287–1449, e-mail: *tami.kelly@hq.doe.gov, thomas.mann@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

OHA published a notice of proposed procedures for final crude oil refunds in

the **Federal Register** on November 12, 2003, and requested comments from interested parties ("the November 12 notice"). 68 FR 64098. The November 12 notice recounted the history of the federal regulations governing the pricing and allocation of domestic crude oil and refined petroleum products during the period August 1973 through January 1981 ("the controls period"), and the 1986 Stripper Well settlement agreement that formed the basis for DOE's modified restitutionary policy for refunding crude oil overcharges. Acting under the Stripper Well agreement, OHA distributed 80 percent in equal shares to the States and the Federal government for indirect restitution, and reserved 20 percent of the crude oil overcharges for direct restitution to injured claimants (*i.e.* end-users of refined petroleum products), in a refund proceeding conducted by OHA under the procedural regulations in 10 CFR Part 205, Subpart V. The refund process was prolonged because DOE continued to collect crude oil overcharge funds into the 21st century. In a series of initial and supplemental refund payments, OHA has paid successful claimants at the cumulative "volumetric" rate of $0.0016 per gallon. Those initial and supplemental refund claims have now been resolved, and OHA intends to distribute all remaining crude oil overcharge funds held by DOE for successful claimants "insofar as practicable." *Consolidated Edison Company of New York* v. *Abraham*, No. CIV.A.1:01CV00548 (D.D.C. May 9, 2003) (Westlaw, 2003 WL 21692698), *aff'd*, No. 03–1498 (Fed. Cir. Feb. 9, 2004).

In order to distribute the entire amount of the 20 percent reserve, OHA proposed to use an electronic verification and application process, and to pay refunds through electronic fund transfers. The November 12 notice proposed to calculate the volumetric refund amount at the outset by dividing the money in the reserve, then $262 million ("the numerator"), by the number of gallons of refined petroleum products purchased during the controls period by successful claimants, then estimated at 390 billion gallons ("the denominator"), yielding a volumetric refund amount of $0.00067 per gallon. The November 12 notice proposed to send direct notice of the final refund distribution only to claimants who would be eligible to receive refunds greater than $250. While they would not receive notice of the final refund payment, the November 12 notice proposed that successful claimants eligible for refunds below $250 would still be permitted to file claims. Although filing services had represented many claimants, we proposed to send final payments directly to claimants. We also proposed to limit the application period for final refunds to 180 days, and indicated that we would not permit claimants to revisit their purchase volume figures established earlier. Finally, we stated that any money left unclaimed after the final round of crude oil refunds would be divided equally between the States and the Federal government, as prescribed in the Stripper Well agreement.

II. Summary and Response to Comments on Proposed Final Refund Procedures

DOE received nine comments in response to the November 12 notice, submitted by law firms, trade associations, filing services that represent successful claimants, the National Association of State Energy Officials, and a state energy office. This section of the Supplementary Information summarizes the issues raised in the comments, and gives DOE's response, as follows:

Comment: Two commenters addressed several issues concerning the calculation of the volumetric refund amount. They contend that the November 12 notice underestimates the number of dollars that should be in the numerator, and overestimates the number of gallons that should be in the denominator. They urge OHA to include in the numerator the $9.5 million currently in the Citronelle end users account, any funds returned to the reserve for claimants as a result of refund awards already made and later rescinded ("returned funds"), and all other crude oil overcharge monies held by DOE that are arguably subject to the Stripper Well agreement, in addition to the money in the reserve for claimants. They contend OHA should consider the time value of money, pointing out that the money in the reserve has now grown to $264 million, and interest will continue to accrue on those funds until the refund process is completed. They also call on OHA to determine the volume figure in the volumetric denominator more precisely, by excluding all gallons that ultimately prove to be ineligible for final refunds for any reason, including failure to seek the supplemental refunds authorized in 1995 or the final refunds authorized in this notice, and any downward adjustments in contested claims that reduce the number of gallons approved by OHA as the basis for granting refunds. These commenters argue that to account for these factors, OHA should defer the calculation of the volumetric refund amount until the final application period closes, and all claims submitted have been reviewed. In this way, the number of dollars in the numerator will be maximized to include all crude oil overcharge funds payable to claimants plus accrued interest, and the number of gallons in the denominator will be minimized to exclude all ineligible gallons. Both adjustments will increase the volumetric amount, and help to accomplish the goal of distributing the entire amount of overcharges reserved for successful crude oil refund claimants "insofar as practicable." These commenters further contend that if the volumetric is calculated according to the proposed method, it would leave a substantial portion of the crude oil overcharges undistributed to the end user claimants for whom the funds are held by DOE, and therefore divert those funds for indirect restitution to the States and Federal government. That result, they contend, would frustrate the effectuation of the objective of DOE's Subpart V crude oil refund proceeding, and the holding of the *Consolidated Edison* case. The commenters maintain the more accurate calculation of the volumetric would justify the minimal delay entailed. Finally, to the extent there remain undistributed funds at the conclusion of a final refund payment to all qualified end user claimants, one commenter urges OHA to calculate a "supplemental final volumetric," which would be used to make a closeout payment to claimants who are entitled to receive $250 or more.

Response: We believe these comments have merit, and that OHA should adopt the method they advocate for calculating the volumetric refund amount. As explained below, however, we do not plan to make the suggested closeout payment.

We agree with the commenters that the money in the Citronelle end users account (currently $9.5 million) should be included in the final distribution of crude oil overcharge funds. DOE was a party to the Citronelle settlement agreement, which directs the Department to transfer those funds to the Subpart V crude oil refund proceeding. It is already DOE's practice that "returned funds" (recovered from refund awards that were subsequently reduced for any reason) are deposited into the claimants reserve and they will be included in the final distribution. In addition to the Citronelle end users account, DOE is holding a small amount of other crude oil overcharge funds, and these moneys, which total approximately $1 million at this time,

will also be included in the final distribution.

Concerning the timing of the volumetric calculation, the goal of this proceeding is to distribute the entire amount of crude oil overcharge funds held by DOE to end user claimants. By its nature, the task presents a moving target, where the amount of money in the volumetric numerator will increase as funds are added and interest accrues, and the number of gallons in the volumetric denominator will decrease as claimants fail to come forward or for any other reason fail to present an adequate application. OHA can estimate the volumetric as $0.00072 at this time, by dividing the dollars currently available for distribution, $275 million, by the approved gallons currently eligible for refunds, 382 billion. Under the most optimistic scenario, even with an electronic verification and application process, OHA will not know the value of the volumetric denominator before the 180 day application period is closed. Thus, we will delay the final volumetric calculation until the close of the application period. This will make the distribution of refunds more cost-effective, and eliminate the need for the proposed closeout payment. The only disadvantage of using a last-minute volumetric refund calculation is a delay in the disbursements of payments until the close of the application period. In the past, OHA announced the volumetric amount when opening the application period for a round of crude oil refunds and began disbursing payments immediately. The prior supplemental refund payments were viewed in the context of an ongoing process, as DOE continued to recover additional overcharges. *See Crude Oil Supplemental Refund Distribution,* 18 DOE ¶ 85,878 (1989); *Issuance of Supplemental Refund Checks in Special Refund Proceeding Involving Crude Oil Overcharge Refunds,* 60 FR 15562 (1995). This time, however, our goal is different. We are now concluding the refund process, and we fully intend to distribute all of the reserved funds to claimants "insofar as practicable." With this goal in mind, we agree that the efficiency to be gained by calculating the volumetric after the close of the application period is worth the minimal delay. Any money remaining after the final refund payments will be divided equally between the States and the Federal government.

Comment: Several commenters addressed the proposal in the November 12 notice to pay final refunds directly to claimants that are represented by "filing services," stating that this would constitute an unwarranted departure from OHA's longstanding practice in the Subpart V crude oil refund proceeding. In the absence of specific problems, according to the commenters, there is no reason for OHA not to continue the settled practice of honoring the contracts between filing services and their clients. If there is a history of problems with specific filing services, the commenters urged OHA to impose appropriate conditions on those filing services alone, such as requiring that a filing service post a performance bond, or establish an escrow account. These commenters maintain that filing services are necessary to an efficient refund process, and that cutting them out of the historic distribution chain at this late stage would delay rather than expedite the conclusion of the refund process. Several commenters also pointed out that some "filing services" are attorneys who are subject to the canons of ethics and regulation including disciplinary sanctions by their respective State bars. With respect to non-attorney filing services, several commenters pointed to the services filing services rendered to refund claimants, and their track record over the long history of the crude oil refund proceeding. Several commenters urged OHA to accept claim verifications from all representatives who already have powers of attorney on file.

Response: These comments raise meritorious issues. It is true, as the commenters point out, that both attorney and non-attorney filing services made it possible for many claimants to obtain refunds who would not have otherwise received them. Filing services served their clients by maintaining contact with OHA and helping to resolve questions about claimants' eligibility for refunds. On balance, OHA will again need to rely on the filing services in order to reach as many claimants as possible in the final refund distribution. The filing services will in turn have an incentive to contact their clients, verify their claims, and submit updated information to OHA.

We also agree with the commenters that there is no reason to sanction all filing services merely because OHA experienced problems with some of them during prior rounds of the refund process. We will therefore continue the practice of paying refunds to most of the filing services we paid in the last distribution, including attorneys and non-attorneys, provided that each filing service submits a current "Escrow Certification" to OHA and certifies that it has provided notice of the final refund payment to all of its clients. The Escrow Certification which OHA has previously required filing services to submit states that (1) The filing service has established an escrow account for the purpose of depositing refund payments (electronic fund transfers or checks) received on behalf of its clients, (2) it is the filing service's normal business practice to deposit all refund payments into the escrow account within two business days, (3) it is the filing service's normal business practice to disburse all refunds to clients (less commissions or fees) within 30 calendar days of receiving those funds, and (4) the filing service agrees to make records for its escrow account available to OHA on request. We will again use that form of certification. In cases where there has been a history of problems with a specific filing service, OHA may determine to pay that service's claimants directly or may require additional measures to ensure that refunds reach the claimants who are entitled to receive them. Because each filing service is different, and the contracts with their clients vary, it is impossible to structure a uniform approach, and OHA will deal with filing services individually.

Comment: Several commenters generally supported the proposals to expedite the final stages of the refund process by using electronic filings and strict time limits, noting that substantial delays have occurred in the past. They also urged DOE to make sufficient resources available so that OHA could process the applications quickly. One commenter urged OHA to consider accelerating the process, and suggested shortening the proposed 180-day filing period.

Response: While the task OHA undertook in fashioning the crude oil refund process—reaching injured claimants across the United States—has been enormous, we acknowledge that there have been substantial delays. For that reason, we are designing a process for the final refund distribution that will operate with maximum efficiency. As described in the November 12 notice, eligibility for final refunds is limited to successful claimants who received prior refunds. No new parties are permitted to apply for refunds. No changes will be made in the purchase volumes previously approved by OHA. The time for filing an application for the final refund will be strictly limited to 180 days. The choice of this time period represents a careful balancing of fairness versus expediency. We need to allow sufficient time for eligible claimants to learn the refund is available, to verify their claims, and update their information in OHA's database. In our view, 180 days is a reasonable length of time to accomplish this objective.

However, we believe that a shorter time would not be fair to smaller claimants, who might not learn about the refund availability as soon as larger applicants who have corporate or government officials, lawyers, or filing services representing their interests.

Comment: One commenter, a trade association that estimates few of its members' claims would exceed $100, challenged the proposal not to send direct mail notice of the final refund to claimants who would receive less than $250. This commenter asserts that OHA "provides little justification for the $250 cut-off" in the November 12 notice, and advocates using the same $50 cut-off that OHA used for the supplemental refund authorized in 1995. See *Issuance of Supplemental Refund Checks in Special Refund Proceeding Involving Crude Oil Overcharge Refunds,* 60 FR 15562 (1995). The commenter argues that the marginal cost to DOE of giving notice to smaller claimants cannot be so high as to justify cutting them out of the information chain and consequently reducing the chance they will learn of the refund availability, and urges OHA to "reexamine its assumptions."

Response: After considering this comment, we have decided to adopt a $200 cut-off level for giving direct notice to claimants eligible to receive final refunds. Using the $50 cut-off advocated by the commenter instead of the $200 cut-off level would mean mailing out notice to nearly 29,000 additional claimants, and the cumulative amount of refunds these claimants could receive represents only 1.1 percent of the total fund available. For these reasons, we believe adopting the $200 cut-off level strikes a reasonable balance that will still enable OHA to notify a large number of claimants eligible to receive virtually all of the money while avoiding an undue administrative burden. OHA's current database contains only purchase volume information for each claimant. The $200 refund amount must therefore be expressed as a gallon figure; at the estimated volumetric of $0.00072 per gallon, a refund of $200 translates to a cut-off volume of 280,000 gallons. Thus, claimants who purchased less than 280,000 gallons of refined petroleum products during the controls period will not receive direct notice of the final refund. Direct mail notice notwithstanding, all valid, timely claims will be considered.

In addition to publishing this notice in the **Federal Register**, OHA will publicize the commencement of the claims proceeding with a press release, and we will attempt to communicate with associations or organizations that represent entities who are likely to be claimants to alert them to the proceeding. We will not adopt a processing cut-off for small claimants, even though Section 205.286(b) of the Subpart V regulations would permit that action. Finally, we note that this commenter can obviate its specific concerns by taking responsibility for alerting the claimants it represents to the coming opportunity to obtain a final crude oil refund payment.

Comment: One commenter, a State energy office, urged OHA to eschew the proposed refund process altogether, and give all of the crude oil overcharges reserved for claimants to the States for indirect restitution. Under the terms of the Stripper Well settlement, the *Petroleum Overcharge Distribution and Restitution Act of 1986* ("PODRA"), DOE's Modified Statement of Restitutionary Policy, and a long line of decisions by OHA and the Federal courts, DOE is obliged to make a final distribution of the entire amount of funds reserved for successful crude oil refund claimants "insofar as practicable." Accordingly, we must reject that commenter's suggestion, which would contravene the legal and policy underpinnings of the crude oil refund proceeding. Policy consideration and binding precedent dictate that the specific funds at stake be used first for direct restitution to claimants. However, if there remains any unclaimed money at the end of the refund process, we will divide it equally between the States and the Federal government, for indirect restitution under the terms of the Stripper Well settlement agreement.

Comment: One commenter, an attorney who has pending lawsuits against DOE and against claimants whom he does not represent, including one or more civil actions in which he seeks a fee from the funds held for claimants by DOE to compensate him for his purported role in bringing about the final crude oil refund distribution, asserted that DOE should deduct any fee awarded to him before disbursing any refunds to claimants.

Response: Recent Federal court decisions have rejected a similar fee claim advanced by this same commenter. The United States Court of Appeals for the D.C. Circuit held that since the Federal government has not waived its sovereign immunity, it could not order DOE to pay a fee from crude oil overcharge funds in its possession to this commenter under the common fund doctrine for helping third parties recover money from a government-created escrow account held in the United States Treasury. *Kalodner* v. *Abraham,* Civil Action No. 97–2013 (RWR) (D.D.C. July 30, 2001), 3 CCH Fed. Energy Guidelines ¶ 26,739, *aff'd,* 310 F.3d 767 (D.C. Cir. 2002). As the Court of Appeals noted, the sine qua non of Federal sovereign immunity is the Federal government's possession of the money in question; nothing more is needed. The D.C. Circuit affirmed the District Court, whose decision also noted that the OHA refund process is a by-product of a public enforcement action undertaken by DOE under the Economic Stabilization Act of 1970 ("ESA"), and the Emergency Petroleum Allocation Act of 1973 ("EPAA"), as amended. Under those statutes, there also existed a parallel private right of action for overcharges made in violation of Federal oil price controls. It is only through a private right of action for recovery of overcharges that a plaintiff could be awarded legal fees from a private party defendant. The commenter has never represented any of the private parties from whom he now seeks a fee from the escrow account held in the Treasury for crude oil claimants, and he never filed a private overcharge action on their behalf. Furthermore, nothing in the agency's applicable Subpart V regulations, 10 CFR Part 205, Subpart V, nor in any of the many refund cases decided after the promulgation of these regulations in 1979, authorizes an attorney's fee award refund in these circumstances. Thus, there appears to be no basis whatsoever for DOE to pay a fee to this commenter, and no need to consider deducting any amount for a fee before disbursing refunds to claimants.

III. The Effect of Utility Deregulation on Eligibility To Receive Refunds

Utilities received many of the largest crude oil refunds. Although OHA received no written comments concerning the impact of changes in the utility industry that have occurred since 1987, the matter deserves special mention here. As OHA stated in the *Notice Explaining Procedures for Processing Refund Applications in Crude Oil Refund Proceedings Under 10 CFR Part 205, Subpart V,* 52 FR 11737 at 11742; 7 DOE (CCH) ¶ 90,512 (April 10, 1987) (the 1987 Notice), crude oil refunds to utilities are conditioned on each utility's certification that it will notify the applicable State regulatory body and pass through the entirety of the refund to its retail customers. This requirement is premised on the notion that regulated utilities were not themselves injured by crude oil overcharges, since they historically passed on these overcharges to their customers through regulatory fuel adjustment cost mechanisms in the form of higher rates for electricity. Since

1987, changes have occurred. Some States have enacted various types of deregulation schemes, which in turn led to the disintegration of many firms in the public utility industry. As a result, the same regulatory mechanisms that were previously available to effectuate restitution to overcharged utility customers may no longer be available. In such instances OHA may require a modified certification from the utility claimant. The revised certification will eliminate the reference to a governmental regulatory body while retaining the requirement that the utility pass the refund through to its retail customers on a dollar-for-dollar basis.

IV. Final Refund Procedures

Based on our discussion of the comments above, OHA will adopt the following final refund procedures. As explained in the November 12 notice, we must verify the accuracy of information in the OHA crude oil database before disbursing final refunds to individual claimants. OHA will send notice to all claimants (or their representatives of record) who purchased at least 280,000 gallons of refined petroleum products during the controls period and therefore are eligible to receive refunds exceeding $200 based on an estimated per-gallon volumetric amount of $0.00072. This will include the 34,000 largest claimants. The orders authorizing prior crude oil refund payments required claimants to notify OHA when their addresses change, and notice will be sent to the last known address in OHA's crude oil database. The notice will advise the claimant of the availability of the final crude oil refund payment, and show the information that is in the OHA database, including name, address, and a contact person. A unique PIN number will be assigned to each claimant. A claimant must use that PIN in order to verify the information in the database. The claimant must indicate whether the applicant shown in the OHA database should receive the refund, or whether the refund cannot be paid to the listed applicant for any reason, *e.g.*, due to death, divorce, bankruptcy or dissolution of a business.

For the final crude oil refund distribution, we will not mail direct notice to claimants who purchased less than 280,000 gallons of refined petroleum products during the controls period. We continue to believe that the cost and administrative burden of mailing information to these claimants is not justified given the small amount of the refunds. As with the 1995 supplemental refund payment, however, we will accept applications from all successful claimants who are eligible to receive additional refunds, as long as they are filed within the 180-day application period. DOE prefers to make payments by electronic direct deposit, and strongly encourages claimants to choose this method for their final refunds. Many checks issued to claimants during the crude oil refund process were lost, and direct deposit offers a more secure payment method than a paper check. Claimants who choose direct deposit must submit the bank name, city and State, ABA routing number, account number, and the name on the checking or savings account to receive their refund payment. If the direct deposit information is not provided, DOE will issue a check.

This information must be submitted to OHA between July 1 and December 31, 2004. It may be submitted by filling out and mailing the suggested format on the back of the notice using the enclosed postage-paid envelope, or by submitting the information via OHA's Web site at *http://www.oha.doe.gov/2004supp/refunds.asp*.

We ask claimants to provide their Employer Identification Number (for businesses) or Social Security Number (for individuals) because the Internal Revenue Service (IRS) requires that DOE report refund payments on IRS Form 1099–MISC. Claimants should submit this number even if they have previously provided it to our office. By law, individual claimants are not required to disclose their Social Security Numbers. However, if an individual does not report their Social Security number to us, we will direct that 31 percent of the amount of the final refund check be withheld and forwarded to the IRS as back-up withholding.

Unless we receive the information we have requested from each claimant on or before December 31, 2004, the claimant will forfeit all rights to the final crude oil refund. OHA is adopting the strict 180-day application deadline proposed in the November 12 notice. No extensions of time will be granted, and no late applications will be accepted. Additional limitations will be necessary in the final round of crude refunds. All successful claimants have already had extensive opportunities over many years to establish their respective purchase volumes of refined petroleum products, which form the bases for their respective refunds. There will be no further opportunities to revise volumes during the final distribution. No new applications will be accepted—the final crude oil refund payment is available only to successful claimants.

OHA establishes the following timeline for the final stages of the refund process: Mailing of written notice to all of the approximately 34,000 claimants eligible for refunds over $200 (based on a purchase volume exceeding 280,000 gallons and an estimated volumetric of $0.00072) will be completed by June 30, 2004. The period for claimants to submit crude oil refund application information (or verify the extant information in OHA's database) will run from July 1, 2004 through the December 31, 2004 deadline. OHA will issue a **Federal Register** notice setting forth the calculation of the final volumetric refund amount by January 31, 2005. OHA will begin paying refunds by February 1, 2005. OHA anticipates it will complete the payment of refunds by December 31, 2005. Any unclaimed funds will be divided equally between the States and the Federal government.

Issued in Washington, DC, on May 13, 2004.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 04–11524 Filed 5–20–04; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[SFUND–2004–0006, FRL–7665–7]

Agency Information Collection Activities: Proposed Collection; Comment Request; Community Right-to-Know Reporting Requirements Under Sections 311 and 312 of the Emergency Planning and Community Right-to-Know Act (EPCRA), EPA ICR Number 1352.10, OMB Control Number 2050–0072

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request to renew an existing approved collection. This ICR is scheduled to expire on October 31, 2004. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

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

ADDRESSES: Submit your comments, referencing docket ID number SFUND–2004–0006, to EPA online using EDOCKET (our preferred method), by e-mail to *superfund.docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Superfund Docket, Mail code 5305T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Sicy Jacob, Office of Emergency Prevention, Preparedness and Response, 5104A, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–564–8019; fax number: 202–564–8233; e-mail address: *jacob.sicy@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number SFUND–2004–0006, which is available for public viewing at the Superfund Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Superfund Docket is (202) 566–0276. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *www.epa.gov./edocket*.

Affected entities: Entities potentially affected by this action are those facilities required to prepare or have available an MSDS for a hazardous chemical under the Hazard Communication Standard (HCS) of the Occupational Safety and Health Administration. Entities more likely to be affected by this action may include chemical, non-chemical manufacturers, retailers, petroleum refineries, utilities, etc.

Title: Community Right-to-Know Reporting Requirements under Sections 311 and 312 of the Emergency Planning and Community Right-to-Know Act (EPCRA)

Abstract: The authority for these requirements is sections 311 and 312 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 1986 (42 U.S.C. 11011, 11012). EPCRA Section 311 requires owners and operators of facilities subject to OSHA HCS to submit a list of chemicals or MSDSs (for those chemicals that exceed thresholds, specified in 40 CFR part 370) to the State Emergency Response Commission (SERC), Local Emergency Planning Committee (LEPC) and the local fire department (LFD) with jurisdiction over their facility. The submittal of a list of chemicals or MSDSs is a one-time requirement. However, facilities must submit updates to the list of chemicals, within three months, when a new hazardous chemical comes on-site above the reporting threshold. If significant new information arises concerning a previously submitted MSDS, a facility must submit a revised MSDS. EPCRA Section 312 requires owners and operators of facilities subject to OSHA HCS to submit an inventory form (for those chemicals that exceed the thresholds, specified in 40 CFR part 370) to the SERC, LEPC, and LFD with jurisdiction over their facility. This activity is to be completed on March 1 of each year, on the inventory of chemicals in the previous calendar year.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: The average burden for MSDS reporting under 40 CFR 370.21 is estimated at 1.6 hours for new and newly regulated facilities and approximately 0.6 hours for those existing facilities that obtain new or revised MSDSs or receive requests for MSDSs from local governments. For new and newly regulated facilities, this burden includes the time required to read and understand the regulations, to determine which chemicals meet or exceed reporting thresholds, and to submit MSDSs or lists of chemicals to SERC, LEPCs, and local fire departments. For existing facilities, this burden includes the time required to submit revised MSDSs and new MSDSs to local officials. The average reporting burden for facilities to perform Tier I or Tier II inventory reporting under 40 CFR 370.25 is estimated to be approximately 3.1 hours per facility, including the time to develop and submit the information. There are no recordkeeping requirements for facilities under EPCRA Sections 311 and 312.

The average burden for state and local governments to respond to requests for MSDSs or Tier II information under 40 CFR 370.30 is estimated to be 0.17 hours per request. The average burden for state and local governments for managing and maintaining the reports is estimated to be 32.25 hours. The average burden for maintaining and updating the 312 database is 320 hours. The total burden to facilities over the three-year information collection period is estimated to be 5,686,000 hours, at a cost of $186 million, with an associated state and local burden of 401,000 hours at a cost of $9.2 million. The burden hours listed here are from the previously approved ICR. The labor costs have been adjusted to December

2003 wage rate published by U.S. Bureau of Labor Statistics.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: May 17, 2004.

Deborah Y. Dietrich,

Director, Office of Emergency Prevention, Preparedness and Response.

[FR Doc. 04–11560 Filed 5–20–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6651–7]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared May 3, 2004 Through May 7, 2004 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 2, 2004 (69 FR 17403).

Draft EISs

ERP No. D–FHW–D40323–PA Rating EC2, U.S. 202, Section ES1 Improvements Project, To Relieve Traffic Congestion and Improve the Corridor, Funding and U.S. Army COE Section 404 Permit, Delaware and Chester Counties, PA.

Summary: EPA has environmental concerns with the proposed project regarding potential impacts to surface water, forested habitat, historic structures, and Environmental Justice areas. EPA recommends utilizing the existing loop road into the final design to further avoid and minimize impacts to aquatic resources.

ERP No. D–FHW–F40421–IN Rating EO2, US–31 Improvement from Plymouth to South Bend, Running from Southern Terminus at US–30 to Northern Terminus at US–20, Marshall and St. Joseph Counties, IN.

Summary: EPA has environmental objections regarding the proposed project based on the magnitude of wetland impacts. EPA requested that additional alternatives be analyzed.

ERP No. D–NPS–D65028–PA Rating LO, Lackawanna Heritage Valley a State and National Heritage Area, Management Action Plan, Implementation, Lackawanna, Luzerne, Wayne and Susquehanna Counties, PA.

Summary: EPA expressed lack of objections with the preferred alternative.

ERP No. D–SFW–J64009–CO Rating EC2, Rocky Flats National Wildlife Refuge Comprehensive Conservation Plan, 15-Year Guidance for Management of Refuge Operations, Habitat Restoration and Visitor Services, Implementation, Jefferson and Boulder Counties, CO.

Summary: EPA expressed concerns over potential environmental impacts to the Refuge from adjacent land uses. EPA recommended that additional information be provided regarding potential indirect impacts from the proposed development of the transportation corridor, including identification of feasible mitigation measures to offset those impacts. EPA also suggested further discussion of the DOE retained area in terms of weed dispersal and projected final contamination levels.

ERP No. DS–AFS–L39057–OR Rating EC2, Rimrock Ecosystem Restoration Projects, New Information on the Commercial and Non-commercial Thinning Treatments in the C3 Management Area, Umatilla National Forest, Heppner Ranger District, Grant, Morrow and Wheeler Counties, OR.

Summary: EPA continued to express concerns with air quality impacts from prescribed burning, the funding of restoration projects and adverse impacts from roads.

Final EISs

ERP No. F–AFS–D40322–PA Sugar Run Project Area (SRPA), To Achieve and Maintain the Desired Conditions as stated in Forest Plan, Allegheny National Forest, Bradford Ranger District, McKean County, PA.

Summary: EPA's comments are adequately addressed in the Final EIS. Therefore, EPA has no objection to the proposed action.

ERP No. F–AFS–D65027–00 Jefferson National Forest Revised Land and Resource Management Plan, Implementation, Mount Rogers National Recreation Area, Clinch, Glenwood, New Castle, and New River Valley Rangers Districts, VA, WV, and KY.

Summary: EPA expressed environmental concerns due to potential impacts from erosion/sedimentation, air emissions, and ground water contamination. EPA suggested that these issues be addressed as the plan is implemented.

ERP No. F–AFS–J65380–UT Prima East Clear Creek Federal No. 22–42 Gas Exploration Well, Application for Permit to Drill (APD) including a Surface Use Plan of Operations, Approval, Castle Valley Ridge, Ferron/Price Ranger District, Manti-La Sal National Forest, Carbon and Emery Counties, UT.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–COE–L36115–WA Centralia Flood Damage Reduction Project, Chehalis River, Lewis and Thurston Counties, WA.

Summary: EPA expressed continuing concerns that potential impacts to the Total Maximum Daily Load (TMDL) for the upper Chehalis River were not analyzed, and continuing concerns that wetland mitigation proposed is not sufficient to compensate for impacts to wetland functions.

ERP No. F–IBR–K65259–CA Pajaro Valley Water Management Agency (PVWMA) Revised Basin Management Plan Project, Connection of PVWMA Pipeline to the Santa Clara Conduit of the Central Valley Project (CVP), Santa Cruz, Monterey and San Benito Counties, CA.

Summary: EPA continues to express concerns regarding cumulative impacts to the Pajaro Valley, San Joaquin Valley, and Central Valley Project operations from imported water projects.

ERP No. F–NPS–D65028–PA Lackawanna Heritage Valley—a State and National Heritage Area, Management Action Plan, Implementation, Lackawanna, Luzerne, Wayne and Susquehanna Counties, PA.

Summary: EPA expressed lack of objections with the preferred alternative.

Dated: May 18, 2004.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 04–11563 Filed 5–20–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6651–6]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/*

Weekly receipt of Environmental Impact Statements

Filed May 10, 2004 Through May 14, 2004 Pursuant to 40 CFR 1506.9.

EIS No. 040226, Final EIS, FHW, NH, I–93 Highway Improvements, Salem to Manchester, Funding, NPDES and U.S. Army COE Section 404 Permits Issuance, Hillsborough and Rockingham Counties, NH, Wait Period Ends: June 21, 2004, Contact: William F. O'Donnell, P.E (603) 228–3057.

EIS No. 040227, Draft EIS, SFW, ME, Petit Manan National Wildlife Refuge Complex, Comprehensive Conservation Plan, Implementation, the Gulf of Maine, Comment Period Ends: July 6, 2004, Contact: Nancy McGarigal (413) 253–8562.

EIS No. 040228, Draft Supplement, FHW, AR, Springdale Northern Bypass Projects, U.S. Highway 412 Construction, Additional Information Designation of a Preferred Alternative, Funding and NPDES Permit Issuance, Benton and Washington Counties, AR, Comment Period Ends: July 10, 2004, Contact: Randal Looney (501) 324–6430.

EIS No. 040229, Final EIS, FHW, WA, I–90 Two-Way Transit and HOV Operation Project, Provision of Reliable Transportation between Seattle and Bellevue, Sound Transit Regional Express, U.S. Coast Guard and U.S. Army COE Nationwide Permits Issuance, King County, WA, Wait Period Ends: June 21, 2004, Contact: James A. Leonard (360) 753–9408.

EIS No. 040230, Final EIS, AFS, ND, Equity Oil Company Federal 32–4 and 23–21 Oil and Gas Wells Surface Use Plan of Operation (SUP0), Implementation, Located in the Bell Lake Inventoried Roadless Area (IRA), Dakota Prairie Grasslands, Medora Ranger District, Golden Valley County, ND, Wait Period Ends: June 21, 2004, Contact: Jeff Adams (701) 225–5151.

EIS No. 040231, Draft EIS, AFS, OR, Davis Fire Recovery Project, Moving Resource Conditions Closer to the Desired Conditions, Deschutes National Forest, Crescent Ranger District, Deschutes and Klamath Counties, OR, Comment Period Ends: July 6, 2004 Contact: Chris Mickle (541) 433–3216.

EIS No. 040232, Draft EIS, BIA, NY, St. Regis Mohawk Tribe, Mohawk Mountain Casino and Resort, Proposed Transfer of 66 Acres of Land into Federal Trust Status, Fee-to-Trust Acquisition, Sullivan County, NY, Comment Period Ends: July 6, 2004, Contact: Jim Kardatzke (615) 467–1675.

Amended Notices

EIS No. 040139, Draft EIS, FHW, WI, Wisconsin Highway Project, Enhance the Mobility of Motorized and Nonmotorized Travel, U.S. 18/151 (Verona Road) and the U.S. 12/14 (Beltine) Corridors, Dane County, WI, Comment Period Ends: June 8, 2004, Contact: Johnny M. Gerbitz (608) 829–7500. Revision of FR Notice Published on 4/02/2004: CEQ Comment Period Ending on 05/17/2004 has been Extended to 5/08/2004.

EIS No. 040144, Draft EIS, AFS, NV, Martin Basin Rangeland Project, Authorize Continued Livestock Grazing in Eight Allotments: Martin Basin, Indian, West Side Flat Creek, Buffalo, Bradshaw, Buttermilk, Granite Peak and Rebel Creek Cattle and Horse Allotments, Humboldt-Toiyabe National Forest, Santa Rosa Ranger District, Humboldt County, NV, Comment Period Ends: July 1, 2004, Contact: Steve Williams (775) 623–5025. Ext 112 Revision of FR Notice Published on 4/02/2004: CEQ Comment Period Ending 5/17/2004 has been Extended to 7/1/2004.

EIS No. 040156, Draft EIS, AFS, UT, Wasatch Powderbird Guides Permit Renewal, Authorization to Continue Providing Guided Helicopter Skiing Activities on National Forest System (NFS) Land on the Wasatch-Cache and Uinta National Forests, Special-Use Permit (SUP), Provo and Salt Lake City, UT, Comment Period Ends: June 7, 2004, Contact: Steve Scheid (801) 733–2689. Revision of FR Notice Published on 4/09/2004: CEQ Comment Period Ending 05/24/2004 has been Extended to 6/07/2004.

This document is available on the Internet at: *http://www.fs.fed.us/r4/wcnf/projects/proposed/index.shmt1.*

EIS No. 040219, Final EIS, AFS, WI, Programmatic EIS—Cheguamegon-Nicolet National Forests Revised Land and Resource Management Plan, Implementation, Ashland, Bayfield, Florence, Forest, Langlade, Oconto, Oneida, Price, Sawyer, Taylor and Vilas Counties, CA, Wait Period Ends: June 14, 2004, Contact: Sally Hess-Samuelson (715) 362–1384.

Revision of FR Notice Published on 5/14/2004: Correction to Comment Period from 06/4/2004 to 06/14/2004.

Dated: May 18, 2004.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 04–11564 Filed 5–20–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011882.

Title: Zim/COSCON Slot Charter Agreement.

Parties: Cosco Container Lines Co. Ltd. and Zim Israel Navigation Company Ltd.

Synopsis: The agreement authorizes the parties to charter space to/from one another in the trade between North Europe and the Mediterranean and the United States East Coast. The agreement replaces with no changes the parties' previous agreement that expired by its own terms on May 1, 2004. The parties request expedited review.

Dated: May 18, 2004.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 04–11565 Filed 5–20–04; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 04–10852) published on page 26606 of the issue for Thursday, May 13, 2004.

Under the Federal Reserve Bank of San Francisco heading, the entry for First Banks, Inc., St. Louis, Missouri, is revised to read as follows:

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411

Locust Street, St. Louis, Missouri 63166–2034:

1. First Banks, Inc., St. Louis, Missouri, and its subsidiary, The San Francisco Company San Francisco, California; to acquire 100 percent of the voting shares of Continental Mortgage Corporation–Delaware, Aurora, Illinois, and thereby indirectly acquire voting shares of Continental Community Bank and Trust Company, Aurora, Illinois.

Comments on this application must be received by June 7, 2004.

Board of Governors of the Federal Reserve System, May 17, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–11474 Filed 5–20–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

[Docket No. OP–1196]

Notice of Study

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of study and request for Information.

SUMMARY: The Board is conducting a study about disclosures of debit card fees, at the request of members of the United States Senate Committee on Banking, Housing, and Urban Affairs. In connection with the study, the Board solicits comment on whether the existing disclosures required by the Electronic Fund Transfer Act adequately inform consumers of fees imposed by a financial institution that holds the consumer's account and has issued a debit card ("account-holding institution") when the debit card is used to make a purchase from a merchant (or other provider of services). The Board also seeks the public's views on the need for, and the potential benefits of, requiring additional disclosures in each periodic account activity statement to reflect fees imposed by account-holding institutions for debit card use. Lastly, the Board seeks comment on the benefits of requiring disclosure of the amount, source, and recipient of each such fee, as well as a summary of the total amount of such fees for the period, and calendar year-to-date.

DATES: Comments must be received on or before July 23, 2004.

ADDRESSES: You may submit comments, identified by Docket No. OP–1196, by any of the following methods:

- Agency Web Site: *http://www.federalreserve.gov*. Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm*.
- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- E-mail: *regs.comments@federalreserve.gov*. Include docket number in the subject line of the message.
- FAX: 202/452–3819 or 202/452–3102.
- Mail: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, except as necessary for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Daniel Lonergan, Counsel, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412. For users of Telecommunications Device for the Deaf ("TDD") only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

At the request of members of the U.S. Senate Committee on Banking, Housing, and Urban Affairs, the Board is initiating a study of the disclosure of fees imposed by financial institutions that hold a consumer's account and have issued a debit card to access the account ("account-holding institution"). The Board is specifically studying the fees imposed by such account-holding institutions when consumers engage in debit card purchase transactions with a merchant (or other provider of services), otherwise known as "point-of-sale" or "POS" transactions. The Board has been asked to consider whether existing disclosure requirements are adequate and effective in making consumers aware of the imposition of debit card transaction fees by their financial institution. Further, the Board has been asked to consider the possible benefits of requiring additional disclosures in a consumer's periodic account activity statement that would inform the consumer of the amount of each fee imposed by the account-holding institution in connection with a debit card transaction during the statement period, as well as information regarding the source and recipient of such fee, along with a summary of the total amount of such fees for the period.

Point-of-Sale Transactions. When a consumer uses a debit card to make a point-of-sale purchase, the parties to the transaction are typically the consumer, the merchant, the merchant's bank, and the consumer's account-holding bank. The consumer presents a debit card to the merchant to make a purchase, or "swipes" the card through the merchant's POS electronic reader to initiate the process of having the purchase amount debited from the consumer's checking account. In order to enable the account-holding institution to identify the consumer as provided by current regulation, and authorize the electronic fund transfer, the consumer is asked either to enter a personal identification number ("PIN"), for an "online" debit, or is asked to provide a signature, for an "offline" debit. If the transaction is successfully processed, the consumer will receive the goods or services sought, an account at the consumer's bank will be debited, and the merchant's account at the merchant's bank will be credited.

This is a simplified description of the debit card transaction process, as the transaction information described above is commonly carried over one or multiple networks to obtain authorization for the transaction, and commonly involves additional third-party participants. Moreover, the use of such networks and participants can result in the imposition of fees such as interchange fees that can result in costs to, or revenue for, the various parties involved.

The number of cards in circulation with a debit function is estimated to be approximately 287 million, and the number of POS debit card "readers" has risen dramatically. Consequently, the use of debit cards at point-of-sale—both online (PIN-based) and offline (signature-based)—has risen sharply since the mid-1990s.[1] While PIN-based debit's share of total debit transactions was greater than signature-based debit's share in the early-1990s, this is no longer true. Both PIN-based debit and signature-based debit continue to show

[1] For additional historical and statistical information regarding the ATM and debit card industry, as well as information on industry structure, pricing, transaction settlement and processing, and emerging policy issues, see "A Guide to the ATM and Debit Card Industry," F. Hayashi, R. Sullivan, and S. Weiner, Federal Reserve Bank of Kansas City, 2003 (available in electronic form from the Federal Reserve Bank of Kansas City's Web site, *http://www.kc.frb.org* under "Publications & Education Resources").

strong growth. The differing costs of, and fees generated by, PIN-based and signature-based debit transactions have resulted in account-holding institutions and merchants favoring, and promoting, different methods of debit transactions.

For instance, as a general matter, an account-holding bank can receive greater revenue as a result of the interchange fees paid when a consumer chooses a signature-based debit transaction. Thus, these card-issuing, account-holding banks encourage the use of offline, signature-based transactions. Merchants, on the other hand, generally prefer that consumers choose online, PIN-based debit transactions in order to reduce their costs-per-transaction by minimizing the interchange fees they may need to pay.

Congressional Concerns and PIN Fees. In an effort to encourage their debit card holders to choose signature-based, offline transactions and offset the revenue lost when their account-holding customers choose online debit, some account-holding institutions are charging their cardholders a fee when the customer uses the institution's debit card to make a point of sale purchase and chooses the online, PIN-based method (resulting in a "PIN-use" fee). The recent request by some members of Congress that the Board study the issue of debit fees reflects concern that consumers may be unaware, or not adequately informed, that their own bank may impose such PIN fees when the consumer chooses online debit. It may also reflect the belief that, unlike the various fees and surcharges that a consumer may be assessed in an ATM transaction, PIN-use fees assessed at the point of sale may not be adequately disclosed or timely disclosed at the point of sale, or might be inadequately disclosed in the regular account statement the consumer receives after the debit purchase date.

As detailed below, the Board solicits comments from all interested parties on these issues. The Board will consider these public comments in developing a final report to be submitted to the U.S. Senate Committee on Banking, Housing, and Urban Affairs in November 2004, which will address these specific questions, as well as additional issues expressly identified by the Committee.

II. Existing Fee Disclosure Requirements

The following summary of current disclosure requirements provides context so that commenters may more fully address the adequacy of existing disclosures.

The Electronic Fund Transfers Act (EFTA), 15 U.S.C. 1693 *et seq.*, enacted in 1978, sets forth the existing disclosure requirements governing electronic fund transfers (EFTs). The general purpose of the EFTA is to provide a basic framework for establishing the rights, liabilities, and responsibilities of participants in EFT systems. The types of transfers covered by the EFTA include transfers initiated through an automated teller machine, point-of-sale terminal, automated clearinghouse, telephone bill-payment plan, or remote banking program. The statute and regulation require the disclosure of terms and conditions of an EFT service; the documentation of electronic transfers by means of terminal receipts and periodic account statements; limitations on consumer liability for unauthorized transfers; procedures for the resolution of errors; and certain rights related to preauthorized EFTs.

The EFTA is implemented by the Board's Regulation E (12 CFR part 205), and these regulatory requirements are interpreted by the Official Staff Commentary (12 CFR part 205 (Supp. I)). The Official Staff Commentary facilitates compliance and provides protection from civil liability, under § 915(d)(1) of the act, for financial institutions that act in conformity with it. The commentary is updated periodically, as necessary, to address significant questions that arise.

Generally, the EFTA and Regulation E provide for disclosures to consumers about fees related to EFTs (including POS transactions) at three points in time:

- In the initial disclosures provided at the time the consumer contracts for an EFT under Section 905(a) of the EFTA (which includes POS transfers);
- In periodic account statements provided under Section 906(c); and
- On receipts provided at an electronic terminal at the time a transfer is initiated under Section 906(a).

These express statutory requirements are implemented in detail by Regulation E. 12 CFR §§ 205.7(b), 205.9(a) and (b).

Initial Disclosures. Under § 205.7(b), a financial institution must make initial disclosures at the time a consumer contracts for an EFT service, or before the first EFT is made involving the consumer's account. In addition to other information, these disclosures must state "[a]ny fees imposed by the financial institution for electronic fund transfers or the right to make transfers." 12 CFR § 205.7(b)(5). As explained in the Official Staff Commentary to this section, the fees addressed by this disclosure requirement are those fees imposed on the consumer by the account-holding institution. *See* Comment 7(b)(5)–3. Thus, the particular fee that an account-holding institution imposes when its customer engages in a POS debit transaction must be disclosed under this initial disclosure requirement.

Periodic Statement Disclosures. Under § 205.9(b), for each account to or from which EFT can be made, a financial institution must send the consumer a periodic statement. 12 CFR § 205.9(b). This statement must be sent for each monthly cycle in which an EFT has occurred, and must be sent at least quarterly even if no such transfer has occurred. In addition to other information, this statement must set forth "[t]he amount of any fees assessed against the account during the statement period for electronic fund transfers, for the right to make transfers, or for account maintenance." § 205.9(b)(3).

The Official Staff Commentary to this provision provides additional clarification that is relevant to commenters, the goals of the requested study, and to consumers. The fees to be disclosed in the periodic statement may include fees for EFTs as well as for other, non-electronic services (both fixed and per-item fees). Significantly, these fees may be stated "as a total or may be itemized in part or in full." *See* comment 9(b)(3)–1. Thus, for example, if an account-holding institution imposes fees on the consumer for an online POS debit transaction, these fees must be disclosed in the periodic statement but may be aggregated with other fees; a per-transaction itemization of each fee imposed by the card-issuing bank for a POS debit transaction is permitted, but not required by the regulations.

Disclosures Contained in Receipts Provided at Electronic Terminals. Under § 205.9(a), financial institutions must make a receipt available to a consumer at the time the consumer initiates an EFT "at an electronic terminal," which includes a POS terminal. § 205.2(h). The Official Staff Commentary expressly provides that "[a]n account-holding institution may make terminal receipts available through third parties such as merchants or other financial institutions." *See* comment 9(a)–2. Consequently, when a debit card is used at point-of-sale, the merchant provides a terminal receipt that contains the information that the account-holding institution is required to provide to the consumer.

Certain information is required to be provided on the terminal receipt. Section 205.9(a)(1) provides that the amount of the transfer must be stated, along with other information such as the date the transfer is initiated, the type of

transfer, the terminal location, and other information. A transaction fee, however, must be disclosed on the receipt, and additionally displayed on or at the terminal, *only if* the fee is included in the amount of the transfer. If such fee is not included in the transfer amount, the receipt need not state the fee and the display requirements are not triggered.

Thus, by way of example, assume that an account-holding institution charges its customer a $1.00 transaction or PIN-use fee each time the customer uses the institution's debit card for an online POS transaction. If the debit card is used at point-of-sale to purchase a $20 item, and the "amount of the transfer" on the receipt is identified as "$21.00" (that is, the PIN-use fee is included in the amount of the transfer), then the $1.00 fee must be disclosed on the receipt and displayed on or at the terminal, or on the terminal screen. If, however, the "amount of the transfer" is identified only as "$20.00," the § 205.9(a) receipt requirements impose no such disclosure obligation. The fees imposed by the account-holding institution would still need to be disclosed under the initial disclosures under § 205.7(b)(5) however, and in the periodic statement sent to the consumer (in either aggregated or segregated form along with other fees) under § 205.9(b)(3), both discussed above.[2]

III. Request for Comment

The Board requests comments on the extent to which these existing EFTA and Regulation E disclosures are adequate and effective in making consumers aware of the circumstances under which account-holding institutions impose a fee, if applicable, when a consumer uses a debit card to make a purchase at point-of-sale. In responding to this request, commenters are asked to address specifically whether the initial disclosures, the disclosures in periodic statements, or any disclosures on receipts at electronic terminals, are effective—either separately, or cumulatively—in providing consumers with sufficient information about such point-of-sale fee practices. To the extent commenters believe that enhanced fee disclosures are recommended, commenters are asked to consider and address whether such disclosures would be more effective as initial disclosures, disclosures provided as part of the consumer's periodic account activity statement, or disclosures included within information available on a terminal receipt. If enhanced disclosures are recommended, commenters are also asked to address whether such PIN-use fees should be separately disclosed, or whether such fees may be aggregated with other disclosed fees.

The Board also solicits specific comment on the need for, and benefits of, requiring additional disclosures in the periodic statement provided by the account-holding financial institution to the consumer. In particular, if commenters believe that additional periodic statement disclosures would be beneficial, commenters are asked to address whether the periodic statement should reflect some or all of the following:

- The amount of each fee imposed by the account-holding financial institution on the consumer in connection with a debit card transaction at point-of-sale;
- The source and recipient of any such fee; and
- A summary of the total amount of such fees for that reporting period, and calendar year-to-date.

IV. Form of Comment Letters

Commenter letters should refer to Docket No. OP–1196 and, when possible, should use a standard typeface with a font size of 10 or 12; this will enable the Board to convert text submitted in paper form to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Comments may be mailed electronically to *regs.comments@federalreserve.gov*. If accompanied by an original document in paper form, comments may also be submitted on 3½ inch computer diskettes in any IBM-compatible DOS- or Windows-based format.

By order of the Board of Governors of the Federal Reserve System, May 18, 2004.

Jennifer J. Johnson,

Secretary to the Board.

[FR Doc. 04–11527 Filed 5–20–04; 8:45 am]

BILLING CODE 6210–01–P

[2] This provision of the regulation was originally drafted to address fees imposed by entities *other than* the consumer's own institution, but was later amended to also include fees imposed by account-holding entities as well. Although the Board lacks specific data, it is presumed that those account-holding institutions that impose a POS debit transaction fee, or PIN fee, do not include such fee in the "amount of the transfer" identified on the receipt, and thus the § 205.9(a)(1) fee disclosure requirements would not be triggered.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–35–04]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project: Assessment of Educational Materials and Information Distribution Systems—New—National Center for Infectious Diseases (NCID), Centers for Disease Control and Prevention (CDC).

CDC, National Center for Infectious Diseases, Division of Healthcare Quality Promotion (DHQP) provides public health prevention resources in the form of notices about adverse outcomes, and educational products and materials to assist healthcare personnel in monitoring and preventing infections, antimicrobial resistance, and other adverse events.

The educational materials include slides sets, web-based information and instruction, posters, video conferences, and workbooks. The educational materials may be distributed through the Internet, postal mail, or electronic mail. The notices include important alerts about healthcare-associated disease outbreaks and clusters that may be of national importance. These notices are delivered through a voluntary Rapid Notification System e-mail subscriber list that can also rapidly gather information to assess the scope of these problems in U.S. healthcare facilities and target corrective actions or educational strategies.

To ensure that these important functions are performed efficiently and provide the strongest public health benefit possible, CDC needs to assess their usability and develop strategies to improve quality. In addition, CDC will monitor its DHQP website and other distribution systems (*e.g.* electronic mail, postal mail) and conduct assessments. These assessments will

enable CDC to better assist healthcare personnel in preventing infections, antimicrobial resistance, and other adverse events. Data will be collected using the Internet or printed forms. The estimated annualized burden is 4,855 hours.

Title	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Assessment of Educational Materials	3,125	1	10/60
Assessment of Web site	25,000	1	10/60
Assessment of Knowledge, Attitudes, and Beliefs	1,000	1	10/60

Dated: May 10, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–11278 Filed 5–20–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–04–54]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Sandra Gambescia, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–E11, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov*. Written comments should be received within 60 days of this notice.

Proposed Project

Gonococcal Isolate Surveillance Project (GISP) (OMB Control No. 0920–0307)—Extension—National Center for HIV, STD, and TB Prevention (NCHSTP), Centers for Disease Control and Prevention (CDC).

CDC is requesting OMB approval for a 3-year extension of the Gonococcal Isolate Surveillance Project (GISP), OMB Control No. 0920–0307. The objectives of GISP are to: (1) Monitor trends in antiinicrobial susceptibility of strains of Neisseria gonorrhoeae in the U.S. and (2) characterize resistant isolates. GISAP provides critical surveillance for antimicrobial resistance, allowing for informed treatment recommendations. GISP was begun in 1986 as a voluntary surveillance project and has involved 5 regional laboratories and 28 publicly funded sexually transmitted disease (STD) clinics around the country. The STD clinics submit up to 25 gonococcal isolates per month to the regional laboratories, which measure susceptibility to a panel of antibiotics. Limited demographic and clinical information corresponding to the isolates are submitted directly by the clinics to CDC.

During 1986–2003, GISP has demonstrated the ability to effectively achieve its objectives. The emergence of resistance in the U.S. to fluoroquinolones, commonly used therapies for gonorrhea was identified through GISP and makes ongoing surveillance critical. Emergence of decreased susceptibility to fluoroquinolones among the men having sex with men (MSM) population in the U.S. was also identified through GISP in 2003. Data gathered through GISP were used to change the treatment for gonorrhea for the MSM population in April, 2004.

Under the GISP protocol, clinics are asked to provide 25 isolates per month. However, due to low volume at some site, clinics submit an average of 19 isolates per clinic per month, providing an average of 108 isolates per laboratory per month. For this data collection, a "response" is defined as the laboratory processing and data collection/processing associated with an individual gonococcal isolate from an individual patient. Based on previous laboratory experience in analyzing the gonococcal isolates, the estimated burden for each participating laboratory is 1 hour per response. This time estimate includes the time to record control strain data. We estimate 108 gonococcal isolates per laboratory each month (total number of responses per 5 laboratories is 1,296). The estimated time for clinical personnel to abstract data is 11 minutes per response (19 isolates per clinic per month). The estimated annualized burden for this data collection is 7,650 hours. There is no cost to respondents.

Respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Laboratory	5	1,296	1	6,480
Clinic	28	228	11/60	1,170
Total	33			7,650

Dated: May 17, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–11528 Filed 5–20–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–04–43]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Sandra Gambescia, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–E11, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov*. Written comments should be received within 60 days of this notice.

Proposed Project

Respiratory Protective Devices, 42 CFR 84 Regulation, OMB No. 0920–0109—Extension—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

The regulatory authority for the National Institute for Occupational Safety and Health (NIOSH) certification program for respiratory protective devices is found in the Mine Safety and Health Amendments Act of 1977 (30 U.S.C. 577a, 651 *et seq.*, and 657(g)) and the Occupational Safety and Health Act of 1970 (30 U.S.C. 3, 5, 7, 811, 842(h), 844). These regulations have as their basis the performance tests and criteria for approval of respirators used by millions of American construction workers, miners, painters, asbestos removal workers, fabric mill workers, and fire fighters. In addition to benefiting industrial workers, the improved testing requirements also benefit health care workers implementing the current CDC Guidelines for Preventing the Transmission of Tuberculosis. Regulations of the Environmental Protection Agency (EPA) and the Nuclear Regulatory Commission (NRC) also require the use of NIOSH-approved respirators. Recent developments in this program have provided approvals for self-contained breathing apparatus (SCBA) for use by fire fighters and other first responders to potential terrorist attacks. NIOSH, in accordance with implementing regulations 42 CFR 84: (1) Issues certificates of approval for respirators which have met improved construction, performance, and protection requirements; (2) establishes procedures and requirements to be met in filing applications for approval; (3) specifies minimum requirements and methods to be employed by NIOSH and by applicants in conducting inspections, examinations, and tests to determine effectiveness of respirators; (4) establishes a schedule of fees to be charged applicants for testing and certification; and (5) establishes approval labeling requirements. Cost to respondents will be determined from fee schedules.

Section	Data Type	No. of respondents	No. of responses per respondent	Average burden per response (in hrs.)	Total burden per hours
84.11	Applications	43	10	63.56	27331
84.33	Labeling	43	10	1.54	662
84.35	Modifications	43	10	79.45	34164
84.41	Reporting	43	10	22.70	9761
84.43	Record Keeping	43	10	56.75	24403
84.257	Labeling	43	10	1.50	645
84.1103	Labeling	43	10	1.50	645
Total					97611

Dated: May 17, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–11536 Filed 5–20–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Cooperative Agreements Program Announcement Number 00075, Association of American Medical Colleges, Program Announcement Number 99122, Association of Schools of Public Health, and Program Announcement Number 97014, Association of Teachers of Preventive Medicine, Research Project Areas—Panel 3

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 meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Cooperative Agreements Program Announcement Number 00075, Association of American Medical Colleges, Program Announcement Number 99122, Association of Schools of Public Health, and Program Announcement Number 97014, Association of Teachers of Preventive Medicine, Research Project Areas—Panel 3.

Times and Dates: 8 a.m.–8:30 a.m., June 10, 2004 (Open). 8:30 a.m.–5 p.m., June 10, 2004 (Closed).

Place: Sheraton Midtown Atlanta Hotel at Colony Square, 188 14th Street at Peachtree, Atlanta, GA 30361, Telephone 404.892.6000.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c) (4) and (6), title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Cooperative Agreements Program Announcement Number 00075, Association of American Medical Colleges, Program Announcement Number 99122, Association of Schools of Public Health, and Program Announcement Number 97014, Association of Teachers of Preventive Medicine, Research Project Areas—Panel 3.

Contact Person for More Information: Joan F. Karr, PhD., Scientific Review Administrator, Public Health Practice Program Office, Centers for Disease Control, 4770 Buford Highway, NE., MS–K38, Atlanta, GA 30341, Telephone 770.488.2597.

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: May 17, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–11531 Filed 5–20–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Cooperative Agreements Program Announcement Number 00075, Association of American Medical Colleges, Program Announcement Number 99122, Association of Schools of Public Health, and Program Announcement Number 97014, Association of Teachers of Preventive Medicine, Research Project Areas—Panel 2

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 meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Cooperative Agreements Program Announcement Number 00075, Association of American Medical Colleges, Program Announcement Number 99122, Association of Schools of Public Health, and Program Announcement Number 97014, Association of Teachers of Preventive Medicine, Research Project Areas—Panel 2.

Times and Dates: 8 a.m.–8:30 a.m., June 9, 2004 (Open); 8:30 a.m.–5 p.m., June 9, 2004 (Closed).

Place: Sheraton Midtown Atlanta Hotel at Colony Square, 188 14th Street at Peachtree, Atlanta, GA 30361, Telephone 404.892.6000.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Cooperative Agreements Program Announcement Number 00075, Association of American Medical Colleges, Program Announcement Number 99122, Association of Schools of Public Health, and Program Announcement Number 97014, Association of Teachers of Preventive Medicine, Research Project Areas—Panel 2.

For Further Information Contact: Joan Karr, PhD, Scientific Review Administrator, Public Health Practice Program Office, Centers for Disease Control, 4770 Buford Highway, NE., MS–K38, Atlanta, GA 30341, Telephone 770.488.2597.

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: May 17, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–11532 Filed 5–20–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control

Special Emphasis Panel (SEP): Cooperative Agreements Program Announcement Number 00075, Association of American Medical Colleges, Program Announcement Number 99122, Association of Schools of Public Health, and Program Announcement Number 97014, Association of Teachers of Preventive Medicine, Research Project Areas—Panel 1

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 meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Cooperative Agreements Program Announcement Number 00075, Association of American Medical Colleges, Program Announcement Number 99122, Association of Schools of Public Health, and Program Announcement Number 97014, Association of Teachers of Preventive Medicine, Research Project Areas—Panel 1.

Times and Dates: 7 p.m.–7:30 p.m., June 7, 2004 (Open); 7:30 p.m.–10 p.m., June 7, 2004 (Closed); 8 a.m.–5 p.m., June 8, 2004 (Closed).

Place: Sheraton Midtown Atlanta Hotel at Colony Square, 188 14th Street at Peachtree, Atlanta, GA 30361, Telephone 404.892.6000.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and

(6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Cooperative Agreements Program Announcement Number 00075, Association of American Medical Colleges, Program Announcement Number 99122, Association of Schools of Public Health, and Program Announcement Number 97014, Association of Teachers of Preventive Medicine, Research Project Areas—Panel 1.

For Further Information Contact: Joan Karr, PhD, Scientific Review Administrator, Public Health Practice Program Office, Centers for Disease Control, 4770 Buford Highway, NE., MS–K38, Atlanta, GA 30341, Telephone 770.488.2597.

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: May 17, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–11534 Filed 5–20–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Cooperative Agreements Program Announcement Number 00075, Association of American Medical Colleges, Program Announcement Number 99122, Association of Schools of Public Health, and Program Announcement Number 97014, Association of Teachers of Preventive Medicine, Research Project Areas—Panel 4

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 meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Cooperative Agreements Program Announcement Number 00075, Association of American Medical Colleges, Program Announcement Number 99122, Association of Schools of Public Health, and Program Announcement Number 97014, Association of Teachers of Preventive Medicine, Research Project Areas—Panel 4.

Times and Dates: 7 p.m.–7:30 p.m., June 10, 2004 (Open). 7:30 p.m.–10 p.m., June 10, 2004 (Closed). 8 a.m.–5 p.m., June 11, 2004 (Closed).

Place: Sheraton Midtown Atlanta Hotel at Colony Square, 188 14th Street at Peachtree, Atlanta, GA 30361, Telephone 404.892.6000.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c) (4) and (6), title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Cooperative Agreements Program Announcement Number 00075, Association of American Medical Colleges, Program Announcement Number 99122, Association of Schools of Public Health, and Program Announcement Number 97014, Association of Teachers of Preventive Medicine, Research Project Areas—Panel 4.

Contact Person for More Information: Joan F. Karr, Ph.D., Scientific Review Administrator, Public Health Practice Program Office, Centers for Disease Control, 4770 Buford Highway, NE., MS–K38, Atlanta, GA 30341, Telephone 770.488.2597.

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: May 17, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–11535 Filed 5–20–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003D–0538]

Guidance for Industry and Food and Drug Administration Staff: Food and Drug Administration and Industry Actions on Premarket Notification Submissions: Effect on Food and Drug Administration Review Clock and Performance Assessment; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled "FDA and Industry Actions on Premarket Notification (510(k)) Submissions: Effect on FDA Review Clock and Performance Assessment." This guidance describes how FDA will assess its performance in the premarket notification (510(k)) program relative to the goals that accompany the authorization of medical device user fees. This guidance document is immediately in effect, but it remains subject to comment in accordance with the agency's good guidance practices (GGPs).

DATES: Submit written or electronic comments on this guidance at any time.

ADDRESSES: Submit written requests for single copies on a 3.5" diskette of the guidance document entitled "FDA and Industry Actions on Premarket Notification (510(k)) Submissions: Effect on FDA Review Clock and Performance Assessment" to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health (CDRH), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments concerning this guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.* Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT:

For device issues: Heather Rosecrans, Center for Devices and Radiological Health (HFZ–404), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1190, ext. 143.

For biologics issues: Leonard Wilson, Center for Biologics Evaluation and Research (CBER) (HFM–25), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0373.

SUPPLEMENTARY INFORMATION:

I. Background

The Medical Device User Fee and Modernization Act of 2002 (MDUFMA) (Public Law 107–250), signed into law on October 26, 2002, allows FDA to assess user fees for certain premarket reviews. Performance goals, referenced in the statute, accompany the authorization of medical device user fees. These goals represent a realistic

projection of what CDRH and CBER can accomplish with industry cooperation.

The guidance describes premarket review cycle and decision actions and performance goals for premarket notification submissions (510(k)s). This guidance document is immediately in effect because the agency needs to provide guidance on how it intends to address the performance goals it has committed to meeting. On February 4, 2003, FDA published a notice in the **Federal Register** (68 FR 5643) to establish a public docket (02N–0534) so that we could share information on the implementation of MDUFMA and to provide interested persons an opportunity to share their views. On December 3, 2003, the agency held an open public meeting to update its stakeholders on its progress in implementing the new law, discuss some of MDUFMA's more challenging provisions, and obtain input from interested parties. During the drafting of this guidance, the agency specifically solicited comments to the docket on several aspects of the document in recognition of the interest in this issue. The agency has considered all comments received to date and will accept comments on the guidance at any time.

II. Significance of Guidance

This guidance is being issued consistent with FDA's GGPs regulation (21 CFR 10.115). The guidance represents the agency's current thinking on 510(k) review cycle and decision actions and performance goals. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

To receive "FDA and Industry Actions on Premarket Notification (510(k)) Submissions: Effect on FDA Review Clock and Performance Assessment" by fax machine, call the CDRH Facts-on-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt, press 1 to order a document. Enter the document number (1219) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so by using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH Web site may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/cdrh/guidance.html*. Guidance documents are also available on the Division of Dockets Management Internet site at *http://www.fda.gov/ohrms/dockets*.

IV. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) (the PRA). The collections of information addressed in the guidance document have been approved by OMB in accordance with the PRA under the regulations premarket approval applications (21 CFR part 807, OMB control number 0910–0120).

V. Comments

Interested persons may submit to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, written or electronic comments regarding this document. Submit a single copy of electronic comments to *http://www.fda.gov/dockets/ecomments*. Submit 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. Comments received may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 17, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–11503 Filed 5–20–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection: Comment Request; NIH Customer/Partner Satisfaction Survey of Modification in procedures for Applications and Awards of Research Project Grants

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Office of Extramural Research, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. The proposed information collection was previously published in the **Federal Register** on May 23, 2002, page 36202. No public comments were received. The purpose of this notice is to allow and additional 30 days for public comment. The NIH may not conduct or sponsor, and the respondent is not required to respond to, and information that has been extended, revised or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection: Title: NIH Customer/Partner Satisfaction Survey of Modification in procedures for Applications and Awards of Research Project Grants. *Type of Information Collection Request:* New request. *Need and Use of Information Collection:* The information collected in these surveys will be used by the Office of Extramural research to evaluate the re-engineering initiatives, including the Modular Grant Application Process and initiatives under the NIH Roadmap, Initiative, intended to facilitate application and award of Federal assistance programs administered by the NIH Modular Application/Grant process has been in effect for two years. At the outset of its implementation, the community was advised that the process would reduce administrative burden by focusing the efforts of investigators, institutional officials, and National Institutes of Health (NIH) staff on the science of the application. The NIH now believes it is an appropriate time to determine if these objectives have been met. *Frequency of response:* On occasion. *Affected Public:* Institutional Officials, Principal Investigators (PI's), Peer Reviewers, Program and Grants Management Staff, Institute Budget Officers. The annual reporting burden is as follows: *Estimated Number of Respondents:* 1,000; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours Per Response:*

.334; and *Estimated Total Burden Hours Requested:* 334. Each year we will repeat the same survey with different respondents. There are no Capital Costs, Operating Costs/and or Maintenance Costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. Anthony Demsey, OD, NIH, Building 1, Room 152, Bethesda, MD 20892–7974, or call non-toll-free number (301) 496–0232, or E-mail your request, including your address to: [*Demseya@od.nih.gov*]

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

Dated: May 14, 2004.

Charles Mackay,

Chief, Project Clearance Branch, OPERA, OER, National Institutes olf Health.

[FR Doc. 04–11469 Filed 5–20–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2004–17621]

Commercial Fishing Industry Vessel Safety Advisory Committee; Vacancies

AGENCY: Coast Guard, DHS.

ACTION: Request for applications.

SUMMARY: The Coast Guard seeks applications for membership on the Commercial Fishing Industry Vessel Safety Advisory Committee (CFIVSAC). CFIVSAC advises and makes recommendations to the Coast Guard for improving commercial fishing industry safety practices.

DATES: Application forms should reach the Coast Guard at the location noted in **ADDRESSES** on or before August 15, 2004.

ADDRESSES: You may request an application form by writing to Commandant (G–MOC–3), U.S. Coast Guard, 2100 Second Street, SW., Room 1116, Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: Captain Joseph A. Servidio, Executive Director of CFIVSAC, or David W. Beach, Assistant to the Executive Director, by telephone at 202–267–0505, fax 202–267–0506, e-mail: *dbeach@comdt.uscg.mil* or *http://www.uscg.mil/hq/g-m/cfvs/CFIVSAC.shtml.*

SUPPLEMENTARY INFORMATION: The Commercial Fishing Industry Vessel Safety Advisory Committee (CFIVSAC) is a Federal advisory committee under 5 U.S.C. App. 2. As required by the Commercial Fishing Industry Vessel Safety Act of 1988. The Coast Guard established CFIVSAC to provide advice to the Coast Guard on issues related to the safety of commercial fishing vessels regulated under Chapter 45 of Title 46, United States Code, which includes uninspected fishing vessels, fish processing vessels, and fish tender vessels. (*See* 46 U.S.C. 4508.)

CFIVSAC consists of 17 members as follows: (a) Ten members from the commercial fishing industry who reflect a regional and representational balance and have experience in the operation of vessels to which Chapter 45 of Title 46, United States Code applies, or as a crew member or processing line member on an uninspected fish processing vessel; (b) one member representing naval architects or marine surveyors; (c) one member representing manufacturers of vessel equipment to which Chapter 45 applies; (d) one member representing education or training professionals related to fishing vessel, fish processing vessels, or fish tender vessel safety, or personnel qualifications; (e) one member representing underwriters that insure vessels to which Chapter 45 applies; and (f) three members representing the general public, including whenever possible, an independent expert or consultant in maritime safety and a member of a national organization composed of persons representing the marine insurance industry.

CFIVSAC generally meets once a year. It may also meet for extraordinary purposes. Its subcommittees and working groups may meet intersessionally to prepare for meetings or develop proposals for the committee as a whole to address specific problems.

We will consider applications for five positions that expire or become vacant in October 2004 in the following categories: (a) Commercial Fishing Industry (two positions); (b) Insurance (one position); (c) Education (one position); (d) Public (one position).

Each member serves a 3-year term. Members may serve consecutive terms. All members serve at their own expense and receive no salary from the Federal Government, although travel reimbursement and per diem are provided.

In support of the policy of the Department of Homeland Security on gender and ethnic diversity, we encourage qualified women and members of minority groups to apply.

You may request an application form by writing to Commandant (G–MOC–3), U.S. Coast Guard, 2100 Second Street, SW., Room 1116, Washington, DC 20593–0001; by calling 202–267–0478; by faxing 202–267–0506; or by e-mailing *Kvazquez@comdt.uscg.mil.* This notice and the application are also available on the Internet at *http://dms.dot.gov.*

If you are selected as a member representing the general public, you are required to complete a Confidential Financial Disclosure Report (OGE Form 450). We may not release the report or the information in it to the public, except under an order issued by a Federal Court or as otherwise provided under the Privacy Act (5 U.S.C. 552a).

Dated: April 29, 2004.

Joseph J. Angelo,

Director of Standards, Marine Safety, Security & Environmental Protection.

[FR Doc. 04–11588 Filed 5–20–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4901–N–21]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Kathy Burruss, room 7266, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for "off-site use only" recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Heather Ranson, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *Army:* Ms. Julie Jones-Conte, Department of the Army, Office of the Assistant Chief of Staff for Installation Management, Attn: DAIM–MD, Room 1E677, 600 Army Pentagon, Washington, DC 20310–0600; (703) 602–5180; *Coast Guard:* Commandant, United States Coast Guard, ATTN: Teresa Sheinberg, 2100 Second St., SW., Rm 6109, Washington, DC 20314–1000; (202) 267–6142; *GSA:* Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW., Washington, DC 20405; (202) 501–0084; *Energy:* Mr. Andy Duran, Department of Energy, Office of Engineering & Construction Management, ME–90, 1000 Independence Ave., SW., Washington, DC 20585; (202) 586–4548; *Interior:* Ms. Linda Tribby, Acquisition & Property Management, Department of the Interior, 1849 C Street, NW., MS5512, Washington, DC 20240; (202) 219–0728; *Navy:* Mr. Charles C. Cocks, Director, Department of the Navy, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE., Suite 1000, Washington, DC 20374–5065; (202) 685–9200; (These are not toll-free numbers).

Dated: May 13, 2004.

Mark R. Johnston,

Acting Director, Office of Special Needs Assistance Programs.

Title V, Federal Surplus Property Program Federal Register Report for 5/21/04

Suitable/Available Properties

Buildings (by State)

Florida

Federal Building 124 S. Tennessee Avenue
Lakeland Co: Polk FL
Landholding Agency: GSA
Property Number: 54200420010
Status: Surplus
Comment: 7575 sq. ft., will be vacant March 2005, historic covenants
GSA Number: 4–G–FL–1217

Kentucky

Tract 3018
Berea Ranger District
125 Cherry Road
Berea Co: KY 40403–
Landholding Agency: GSA
Property Number: 54200420014
Status: Excess
Comment: 1696 sq. ft., needs repair, possible lead-based paint, most recent use—residential
GSA Number: 4–A–KY–0616

Texas

Cotulla Border Station
602 N. Main Street
Cotulla Co: LaSalle TX 78014–
Landholding Agency: GSA
Property Number: 54200420008
Status: Surplus
Comment: 2190 sq. ft., cinder block, presence of asbestos/lead paint, most recent use—border patrol office, subject to existing easements
GSA Number: 7–D–CO–0648

Wisconsin

SSA Office Building

203 West Court Street
Janesville Co: WI 53545–
Landholding Agency: GSA
Property Number: 54200420009
Status: Surplus
Comment: 6278 sq. ft. w/parking, most recent use—office
GSA Number: 1–G–WI–604

Land (by State)

Kansas

Parcels 2, 3, 4, 5
Portions/Milford Lake
Hwy 77
Junction City Co: Geary KS
Landholding Agency: GSA
Property Number: 54200420006
Status: Excess
Comment: 2 = 2.2 acres, 3 = 8.4 acres, 4 = 20 acres, 5 = 97.6 acres, most recent use—forestry research
GSA Number: 7–GR–KS–0497

Mississippi

Communication Tower Site
Kiln Co: MS
Landholding Agency: GSA
Property Number: 54200420013
Status: Excess
Comment: 3.20 acre w/VHF tower and storage bldg., encumbered by an easement and a license
GSA Number: 4–D–MS–563A

Pennsylvania

Tract RA34
Indian Rock Dam
Joseph Road
New Salem Co: York PA 17403–
Landholding Agency: GSA
Property Number: 54200420015
Status: Excess
Comment: 3.26 acres, most recent use—wildlife management
GSA Number: 4–D–PA–0797

Suitable/Unavailable Properties

Buildings (by State)

Hawaii

Bldg. 284
Naval Station
Pearl Harbor Co: Honolulu HI 96860–4100
Landholding Agency: Navy
Property Number: 77200420031
Status: Unutilized
Comment: 22,304 sq. ft., possible asbestos/lead paint, most recent use—office

Bldg. 285
Naval Station
Pearl Harbor Co: Honolulu HI 96860–4100
Landholding Agency: Navy
Property Number: 77200420032
Status: Unutilized
Comment: 960 sq. ft., possible asbestos/lead paint, most recent use—storage

Land (by State)

Hawaii

PSD Parcel
Naval Station
Pearl Harbor Co: Honolulu HI 96860–4100
Landholding Agency: Navy
Property Number: 77200420033
Status: Unutilized
Comment: 8.35 acres

Unsuitable Properties

Buildings (by State)

Alabama

Bldg. 00014
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–5000
Landholding Agency: Army
Property Number: 21200420068
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 00039
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–5000
Landholding Agency: Army
Property Number: 21200420069
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 03438
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–5000
Landholding Agency: Army
Property Number: 21200420070
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 04709
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–5000
Landholding Agency: Army
Property Number: 21200420071
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldgs. 01421, 01108
Fort Rucker
Ft. Rucker Co: Dale AL 36362–
Landholding Agency: Army
Property Number: 21200420072
Status: Unutilized
Reason: Extensive deterioration

Bldg. 26601
Fort Rucker
Kinston Co: Coffee AL 36453–
Landholding Agency: Army
Property Number: 21200420073
Status: Unutilized
Reason: Extensive deterioration

Alaska

Bldg. 651
Fort Greely
Delta Junction Co: Fairbanks AK 99737–
Landholding Agency: Army
Property Number: 21200420066
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 659
Fort Greely
Delta Junction Co: Fairbanks AK 99737–
Landholding Agency: Army
Property Number: 21200420067
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

California

Bldg. 62458
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200420021
Status: Excess
Reason: Extensive deterioration

Bldg. 2660
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200420022
Status: Excess
Reason: Extensive deterioration

Bldg. 1223
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200420023
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldg. 2514
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200420024
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldg. 2660
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200420025
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldgs. 14103, 14104
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200420026
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldg. 27604
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200420027
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldg. 43311
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200420028
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldg. 178
Naval Air Facility
El Centro Co: CA 92243–
Landholding Agency: Navy
Property Number: 77200420035
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material Secured Area, Extensive deterioration

Bldg. 187
Naval Air Facility
El Centro Co: CA 92243–
Landholding Agency: Navy

Property Number: 77200420036
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material Secured Area, Extensive deterioration

Bldg. 197
Naval Air Facility
El Centro Co: CA 92243–
Landholding Agency: Navy
Property Number: 77200420037
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material Secured Area, Extensive deterioration

Colorado

Bldg. T223
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21200420161
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material

Bldg. T224
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21200420162
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material

Bldg. T225
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21200420163
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material

Bldg. T226
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21200420164
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material

Bldg. 0051
Pueblo Chemical Depot
Pueblo Co: CO 81006–
Landholding Agency: Army
Property Number: 21200420165
Status: Unutilized
Reason: Extensive deterioration

Bldg. 00630
Pueblo Chemical Depot
Pueblo Co: CO 81006–
Landholding Agency: Army
Property Number: 21200420166
Status: Unutilized
Reason: Extensive deterioration

Florida

Bldg. 1404
Naval Air Station
Milton Co: FL 32570–6008
Landholding Agency: Navy
Property Number: 77200420029
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material Secured Area, Extensive deterioration

Bldg. 583
Naval Air Station
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy
Property Number: 77200420030
Status: Unutilized
Reason: Extensive deterioration

Georgia

Bldg. 00111
Fort Gillem
Forest Park Co: Clayton GA 30297–5122
Landholding Agency: Army
Property Number: 21200420074
Status: Unutilized
Reason: Extensive deterioration

Bldg. 404
Fort Gillem
Forest Park Co: Clayton GA 30297–
Landholding Agency: Army
Property Number: 21200420075
Status: Unutilized
Reason: Extensive deterioration

Bldg. 00813
Fort Gillem
Forest Park Co: Clayton GA 30297–
Landholding Agency: Army
Property Number: 21200420076
Status: Unutilized
Reason: Extensive deterioration

Bldg. 00814
Fort Gillem
Forest Park Co: Clayton GA 30297–
Landholding Agency: Army
Property Number: 21200420077
Status: Unutilized
Reason: Extensive deterioration

Bldg. 00817
Fort Gillem
Forest Park Co: Clayton GA 30297–
Landholding Agency: Army
Property Number: 21200420078
Status: Unutilized
Reason: Extensive deterioration

Bldg. 00818
Fort Gillem
Forest Park Co: Clayton GA 30297–
Landholding Agency: Army
Property Number: 21200420079
Status: Unutilized
Reason: Extensive deterioration

Bldg. 00819
Fort Gillem
Forest Park Co: Clayton GA 30297–
Landholding Agency: Army
Property Number: 21200420080
Status: Unutilized
Reason: Extensive deterioration

Bldg. 00820
Fort Gillem
Forest Park Co: Clayton GA 30297–
Landholding Agency: Army
Property Number: 21200420081
Status: Unutilized
Reason: Extensive deterioration

Bldg. 00822
Fort Gillem
Forest Park Co: Clayton GA 30297–
Landholding Agency: Army
Property Number: 21200420082
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 00434, D2053
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 21200420167
Status: Unutilized
Reason: Extensive deterioration

Bldg. 00465
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 21200420168
Status: Unutilized
Reason: Extensive deterioration

Bldg. 00466
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 21200420169
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 00468, 00471
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 21200420170
Status: Unutilized
Reason: Extensive deterioration

6 Bldgs.
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Location: 15901, 15906, 15907, 16901, 16902, 16903
Landholding Agency: Army
Property Number: 21200420171
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 34508, G0003
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 21200420172
Status: Unutilized
Reason: Extensive deterioration

Idaho

Bldg. 0708
Middleton Co: Canyon ID 83644–
Landholding Agency: Interior
Property Number: 61200420005
Status: Unutilized
Reason: Extensive deterioration

Bldg. 0709
Middleton Co: Canyon ID 83644–
Landholding Agency: Interior
Property Number: 61200420006
Status: Unutilized
Reason: Extensive deterioration

Bldg. 0717
Fruitland Co: Payette ID 83619–
Landholding Agency: Interior
Property Number: 61200420007
Status: Unutilized
Reason: Extensive deterioration

Iowa

Bldg. 01073
Iowa Army Ammo Plant
Middletown Co: Des Moines IA 52638–
Landholding Agency: Army
Property Number: 21200420083
Status: Unutilized
Reason: Secured Area

Kansas

Bldg. 170
Fort Leavenworth
Leavenworth Co: KS 66027–
Landholding Agency: Army
Property Number: 21200420084

Status: Unutilized
Reason: Extensive deterioration

Kentucky

Bldg. 01137
Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 21200420085
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 01197, 01198
Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 21200420086
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 05757, 05801
Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 21200420087
Status: Unutilized
Reason: Extensive deterioration

Bldg. A7170
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 21200420088
Status: Unutilized
Reason: Extensive deterioration

Maryland

Bldg. 4585
Fort George G. Meade
Ft. Meade Co: MD 20755–5115
Landholding Agency: Army
Property Number: 21200420096
Status: Unutilized
Reason: Extensive deterioration

10 Bldgs.
Aberdeen Proving Ground
Harford Co: MD 21005–
Location: E1340 thru E1349
Landholding Agency: Army
Property Number: 21200420097
Status: Unutilized
Reason: Extensive deterioration

20 Bldgs.
Aberdeen Proving Ground
Harford Co: MD 21005–
Location: E3030, E3032, E3034, E3036, E3038, E3040, E3042, E3044, E3046, E3061 thru E3070, E3072
Landholding Agency: Army
Property Number: 21200420098
Status: Unutilized
Reason: Extensive deterioration

5 Bldgs.
Aberdeen Proving Ground
Harford Co: MD 21005–
Location: E3035, E3041, E3076, E3078, E3080
Landholding Agency: Army
Property Number: 21200420099
Status: Unutilized
Reason: Extensive deterioration

Bldgs. E3039, E3060, E3073
Aberdeen Proving Ground
Harford Co: MD 21005–
Landholding Agency: Army
Property Number: 21200420100
Status: Unutilized
Reason: Extensive deterioration

Bldg. 05114
Aberdeen Proving Ground
Harford Co: MD 21005–
Landholding Agency: Army
Property Number: 21200420101
Status: Unutilized
Reason: Extensive deterioration

Bldg. 05208
Aberdeen Proving Ground
Harford Co: MD 21005–
Landholding Agency: Army
Property Number: 21200420102
Status: Unutilized
Reason: Extensive deterioration

Bldg. 5660
Aberdeen Proving Ground
Harford Co: MD 21005–
Landholding Agency: Army
Property Number: 21200420103
Status: Unutilized
Reason: Extensive deterioration

Massachusetts

Bldg. ODO50
Fera USARC
Danvers Co: Essex MA 01923–1121
Landholding Agency: Army
Property Number: 21200420089
Status: Unutilized
Reason: Extensive deterioration

Bldg. ODO58
Fera USARC
Danvers Co: Essex MA 01923–1121
Landholding Agency: Army
Property Number: 21200420090
Status: Unutilized
Reason: Extensive deterioration

Bldgs. ODO60, ODO62
Fera USARC
Danvers Co: Essex MA 01923–1121
Landholding Agency: Army
Property Number: 21200420091
Status: Unutilized
Reason: Extensive deterioration

Bldgs. ODO76, ODO77
Fera USARC
Danvers Co: Essex MA 01923–1121
Landholding Agency: Army
Property Number: 21200420092
Status: Unutilized
Reason: Extensive deterioration

Michigan

Bldg. 930
U.S. Army Garrison–Selfridge
Selfridge Co: MI 48045–
Landholding Agency: Army
Property Number: 21200420093
Status: Unutilized
Reason: Secured Area

Bldg. 001
Crabble USARC
Saginaw Co: MI 48601–4099
Landholding Agency: Army
Property Number: 21200420094
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 8673, 8675
Poxin USARC
Saginaw Co: Oaklan MI 48034–2295
Landholding Agency: Army
Property Number: 21200420095
Status: Unutilized
Reason: Extensive deterioration

Montana

Bldg. P0516
Fort Harrison
Ft. Harrison Co: Lewis/Clark MT 59636–
Landholding Agency: Army
Property Number: 21200420104
Status: Excess
Reasons: Secured Area, Extensive deterioration

New Hampshire

Naval Obs. Tower
Rye Co: NH 03870–
Landholding Agency: GSA
Property Number: 54200420007
Status: Excess
Reason: contamination
GSA Number: 1–N–NH–451

New Jersey

Bldg. 00695
Fort Monmouth
Ft. Monmouth Co: NJ 07703–
Landholding Agency: Army
Property Number: 21200420105
Status: Unutilized
Reason: Extensive deterioration

Bldg. 00739
Fort Monmouth
Ft. Monmouth Co: NJ 07703–
Landholding Agency: Army
Property Number: 21200420106
Status: Unutilized
Reason: Extensive deterioration

Bldg. 00744
Fort Monmouth
Ft. Monmouth Co: NJ 07703–
Landholding Agency: Army
Property Number: 21200420107
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 00746–00749
Fort Monmouth
Ft. Monmouth Co: NJ 07703–
Landholding Agency: Army
Property Number: 21200420108
Status: Unutilized
Reason: Extensive deterioration

Bldg. PO1137
Fort Dix
Ft. Dix Co: Burlington NJ 08640–5506
Landholding Agency: Army
Property Number: 21200420109
Status: Unutilized
Reason: Extensive deterioration

Bldg. TO6734
Fort Dix
Ft. Dix Co: Burlington NJ 08640–5506
Landholding Agency: Army
Property Number: 21200420110
Status: Unutilized
Reason: Extensive deterioration

Bldg. TO6840
Fort Dix
Ft. Dix Co: Burlington NJ 08640–5505
Landholding Agency: Army
Property Number: 21200420111
Status: Unutilized
Reason: Extensive deterioration

New York

Bldg. 00031
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200420112
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 00331, 00337, 00339
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200420113
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 00367–00369
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200420114
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 00630–00632
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200420115
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 00634–00635
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200420116
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 00637–00639
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200420117
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 00660–00665
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200420118
Status: Unutilized
Reason: Extensive deterioration

Bldg. 00701
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200420119
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 00730–00732
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200420120
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 00737–00739
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200420121
Status: Unutilized
Reason: Extensive deterioration

Bldg. 00760
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200420122
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 00762–00765
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200420123
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 00767, 00769
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200420124
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 00830–00834
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200420125
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 00836–00839
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200420126
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 02583, 02600
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200420127
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 04870–04871
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200420128
Status: Unutilized
Reason: Extensive deterioration

North Carolina

Bldg. X2670
Fort Bragg
Ft. Bragg Co: Cumberland NC 28314–
Landholding Agency: Army
Property Number: 21200420129
Status: Unutilized
Reason: Extensive deterioration

Bldg. 31538
Fort Bragg
Ft. Bragg Co: Cumberland NC 28314–
Landholding Agency: Army
Property Number: 21200420130
Status: Unutilized
Reason: Extensive deterioration

Bldg. RPFN012
USCG Cape Hatteras
Buxton Co: Dare NC 27902–
Landholding Agency: Coast Guard
Property Number: 88200420005
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Ohio

Bldg. 1039
Ravenna Army Ammo Plant
Ravenna Co: Portage OH 44266–9297
Landholding Agency: Army
Property Number: 21200420131
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldgs. 1200, T4602, T4605
Ravenna Army Ammo Plant
Ravenna Co: Portage OH 44266–9297
Landholding Agency: Army
Property Number: 21200420132
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Pennsylvania

Bldgs. T1441, T1452, 01457
Letterkenny Army Depot
Chambersburg Co: Franklin PA 17201–
Landholding Agency: Army
Property Number: 21200420133
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldgs. T2361, T2362
Letterkenny Army Depot
Chambersburg Co: Franklin PA 17201–
Landholding Agency: Army
Property Number: 21200420134
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldgs. 02381, T2381, S2386
Letterkenny Army Depot
Chambersburg Co: Franklin PA 17201–
Landholding Agency: Army
Property Number: 21200420135
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 02628
Letterkenny Army Depot
Chambersburg Co: Franklin PA 17201–
Landholding Agency: Army
Property Number: 21200420136
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldgs. T2772, T2796
Letterkenny Army Depot
Chambersburg Co: Franklin PA 17201–
Landholding Agency: Army
Property Number: 21200420137
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldgs. 03223, T3251, T3256
Letterkenny Army Depot
Chambersburg Co: Franklin PA 17201–
Landholding Agency: Army
Property Number: 21200420138
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldgs. T3380, T3381
Letterkenny Army Depot
Chambersburg Co: Franklin PA 17201–
Landholding Agency: Army
Property Number: 21200420139
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

4 Bldgs.
Letterkenny Army Depot
T3728, S3743, S3744, S3783

Chambersburg Co: Franklin PA 17201–
Landholding Agency: Army
Property Number: 21200420140
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldgs. T5313, T5315
Letterkenny Army Depot
Chambersburg Co: Franklin PA 17201–
Landholding Agency: Army
Property Number: 21200420141
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. T5546
Letterkenny Army Depot
Chambersburg Co: Franklin PA 17201–
Landholding Agency: Army
Property Number: 21200420142
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldgs. 05662, 05663
Letterkenny Army Depot
Chambersburg Co: Franklin PA 17201–
Landholding Agency: Army
Property Number: 21200420143
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. T5748
Letterkenny Army Depot
Chambersburg Co: Franklin PA 17201–
Landholding Agency: Army
Property Number: 21200420144
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 00014
CE Kelly Support Facility
Oakdale Co: Allegheny PA 15071–
Landholding Agency: Army
Property Number: 21200420153
Status: Underutilized
Reason: Secured Area

Bldg. 00033
CE Kelly Support Facility
Oakdale Co: Allegheny PA 15071–
Landholding Agency: Army
Property Number: 21200420154
Status: Unutilized
Reason: Secured Area

Bldg. 00044
CE Kelly Support Facility
Oakdale Co: Allegheny PA 15071–
Landholding Agency: Army
Property Number: 21200420155
Status: Unutilized
Reason: Secured Area

Puerto Rico

Bldgs. 01241, 01243, 01244
Fort Buchanan
Ft. Buchanan Co: Guayanabo PR 00934–
Landholding Agency: Army
Property Number: 21200420156
Status: Excess
Reason: Secured Area

4 Bldgs.
Fort Buchanan
01245, 01246, 01247, 01248
Ft. Buchanan Co: Guayanabo PR 00934–
Landholding Agency: Army
Property Number: 21200420157
Status: Excess
Reason: Secured Area

4 Bldgs.
Fort Buchanan
01249, 01250, 01259, 1261
Ft. Buchanan Co: Guayanabo PR 00934–
Landholding Agency: Army
Property Number: 21200420158
Status: Excess
Reason: Secured Area

4 Bldgs.
Fort Buchanan
01263, 01265, 01267, 01269
Ft. Buchanan Co: Guayanabo PR 00934–
Landholding Agency: Army
Property Number: 21200420159
Status: Excess
Reason: Secured Area

4 Bldgs.
Fort Buchanan
01271, 01272, 01273, 01284
Ft. Buchanan Co: Guayanabo PR 00934–
Landholding Agency: Army
Property Number: 21200420160
Status: Excess
Reason: Secured Area

South Carolina

Bldg. 703–F
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200420019
Status: Unutilized
Reason: Secured Area

Bldg. 721–A
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200420020
Status: Unutilized
Reason: Secured Area

Bldg. 724–A
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200420021
Status: Unutilized
Reason: Secured Area

Bldg. 730–M
Savannah River Operations
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200420022
Status: Unutilized
Reason: Secured Area

Tennessee

Bldg. 0611
Fort Campbell
Ft. Campbell Co: Montgomery TN 42223–
Landholding Agency: Army
Property Number: 21200420145
Status: Unutilized
Reason: Extensive deterioration

Texas

Bldgs. 56208, 56220
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200420146
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 56232, 56252, 56272
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200420147
Status: Unutilized
Reason: Extensive deterioration

Bldgs. D5030, D5031
Grand Prairie Reserve Complex
Grand Prairie Co: Tarrant TX 75051–
Landholding Agency: Army
Property Number: 21200420152
Status: Unutilized
Reasons: Secured Area
Extensive deterioration

Bldg. 39
Naval Air Station
Corpus Christi Co: Nueces TX 78419–5021
Landholding Agency: Navy
Property Number: 77200420034
Status: Excess
Reason: Extensive deterioration

Virginia

Bldg. T2101
Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 21200420148
Status: Unutilized
Reason: Extensive deterioration

Wisconsin

Bldgs. MOUT1, MOUT2
Fort McCoy
Ft. McCoy Co: Monroe WI 54656–
Landholding Agency: Army
Property Number: 21200420149
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 08213, 08232
Fort McCoy
Ft. McCoy Co: Monroe WI 54656–
Landholding Agency: Army
Property Number: 21200420150
Status: Unutilized
Reason: Extensive deterioration

Bldg. 02016
Fort McCoy
Ft. McCoy Co: Monroe WI 54656–
Landholding Agency: Army
Property Number: 21200420151
Status: Unutilized
Reason: contamination

Land (by State)

New Jersey

Maurice River Land
Commercial Twnsp Co: Cumberland NJ 08349–
Landholding Agency: GSA
Property Number: 54200420011
Status: Excess
Reason: Not accessible by road
GSA Number: 1–U–NJ–647–1

Ohio

Manhattan Rear Range Light
Toledo Co: Lucas OH 43611–
Landholding Agency: GSA
Property Number: 54200420012
Status: Excess
Reason: landlocked

GSA Number: 1–U–OH–822–1

[FR Doc. 04–11250 Filed 5–20–04; 8:45 am]

BILLING CODE 4210–29–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Prepare a Comprehensive Conservation Plan and Environmental Assessment for the Long Lake National Wildlife Refuge Complex, Moffit, ND

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent.

SUMMARY: The U.S. Fish and Wildlife Service intends to gather information necessary to prepare a Comprehensive Conservation Plan and associated environmental documents for the Long Lake National Wildlife Refuge Complex located in central North Dakota. The Service is issuing this notice in compliance with its policy to advise other organizations and the public of its intentions and to obtain suggestions and information on the scope of issues to be considered in the planning process.

DATES: Written comments should be received by July 1, 2004.

ADDRESSES: Comments and requests for more information should be sent to: Long Lake NWR Planning Project, 12000 353rd Street SE, Moffit, ND 58560–9740.

FOR FURTHER INFORMATION CONTACT: Linda Kelly, Refuge Planner, Division of Refuge Planning, PO Box 25486, DFC, Denver, CO 80225; (303) 236–8132.

SUPPLEMENTARY INFORMATION: The Service has initiated comprehensive conservation planning for the Long Lake National Wildlife Refuge Complex for the management of its natural resources. This Refuge is located in central North Dakota.

Comprehensive planning will develop management goals, objectives, and strategies to carry out the purposes of the Complex's refuges and Wetland Management District, and comply with laws and policies governing refuge management and public use of refuges. Opportunities will be provided for public input at open houses to be held near Long Lake Refuge.

All information provided voluntarily by mail, phone, or at public meetings becomes part of the official public record (*i.e.*, names, addresses, letters of comment, input recorded during meetings). If requested under the Freedom of Information Act by a private citizen or organization, the Service may provide copies of such information.

The environmental impact assessment of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), NEPA Regulations (40 CFR 1500–1508), other appropriate Federal laws and regulations, Executive Order 12996, the National Wildlife Refuge System Improvement Act of 1997, and Service policies and procedures for compliance with those regulations.

Dated: March 3, 2004.

Ralph O. Morgenweck,

Regional Director, Denver, Colorado.

[FR Doc. 04–11529 Filed 5–20–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–060–1320–EL]

Notice of Availability of the Record of Decision for the South Powder River Basin Coal Final Environmental Impact Statement (FEIS), NARO South LBA Tract, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, the Bureau of Land Management (BLM) announces the availability of the ROD for South Powder River Basin Coal FEIS; NARO South LBA Tract.

ADDRESSES: The document will be available electronically on the following Web site: *http://www.wy.blm.gov/*. Copies of the ROD are available for public inspection at the following BLM office locations:

- Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming.
- Bureau of Land Management, Casper Field Office, 2987 Prospector Drive, Casper, Wyoming.

FOR FURTHER INFORMATION CONTACT: Mr. Bob Janssen, Wyoming Coal Coordinator, (307) 775–6206 or Ms. Mavis Love, Land Law Examiner (307) 775–6258. Both Mr. Janssen's and Ms. Love's offices are located at the BLM Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming 82009.

SUPPLEMENTARY INFORMATION: As stated in the FEIS, a ROD will be issued for each of the five Federal coal tracts considered for leasing in the South Powder River Coal FEIS. This ROD covered by this NOA is for coal tract NARO South (WYW–154001) and addresses leasing an estimated 345 million tons of in-place Federal coal administered by the BLM Casper Field Office underlying approximately 2,950 acres of private surface in Campbell and Converse Counties, Wyoming.

Because the Assistant Secretary of the Interior, Lands and Minerals Management, has concurred in this decision it is not subject to appeal to the Interior Board of Land Appeals as provided in 43 CFR part 4. This decision is the final action of the Department of the Interior.

Dated: March 22, 2004.

Robert A. Bennett,

State Director.

[FR Doc. 04–11570 Filed 5–20–04; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–040–1430–ET–007F; 4–08807]

Notice of Public Meetings; Notice of Intent to Amend the Caliente Management Framework Plan, Schell Management Framework Plan, Tonopah Resource Management Plan, and the Las Vegas Resource Management Plan; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) has received an application from the Department of Energy (DOE) to withdraw certain public lands from surface entry and mining for a period of 20 years. The purpose of the withdrawal is to evaluate the lands for the potential construction, operation, and maintenance of a branch rail line (Caliente Rail Corridor) for transportation of spent nuclear fuel and high-level radioactive waste to a geologic repository at Yucca Mountain. Because the proposed withdrawal exceeds 5,000 acres, at least one public meeting is required. The BLM may need to amend four land use plans in order to address the proposed construction, operation, and maintenance of a branch rail line to support the DOE project.

As an alternative to the issuance of a withdrawal under Section 204 of the Federal Land Policy and Management Act of 1976, the BLM could potentially issue a linear right-of-way under Title V of the Federal Land Policy and Management Act.

This notice announces that the BLM will hold two scoping meetings on the

proposed withdrawal and possible land use plan amendments in addition to the five meetings identified by DOE in its Notice of Intent (69 FR 18565–18569 and 69 FR 22496). The locations of all seven meetings are referenced in this notice.

DATES: Those who have comments on the proposed withdrawal and possible amendments to the land use plans must respond in writing no later than June 30, 2004. Comments received after June 30, 2004, will be considered to the extent practicable. The BLM will hold public scoping meetings on the proposed withdrawal and possible land use plan amendments at the dates and locations listed below in the **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: You may send comments on issues regarding the proposed withdrawal and possible land use plan amendments and planning criteria to Dan Netcher, Ely Field Office, BLM, HC33 Box 33500, Ely, Nevada 89301–9408.

FOR FURTHER INFORMATION CONTACT: Dan Netcher, Ely Field Office, BLM, HC33 Box 33500, Ely, Nevada 89301–9408, 775–289–1872.

SUPPLEMENTARY INFORMATION: Public scoping meetings for the DOE Rail Alignment EIS, proposed withdrawal, and BLM Land Use Plan amendments in June are shown below.

Meeting date	Location	Time
June 22, 2004	Tonopah Convention Center, 301 W. Brougher, Tonopah, NV.	1 p.m. to 3 p.m., 6 p.m. to 8 p.m.
June 23, 2004	Lincoln County Court House, 1 North Main, Pioche, NV.	1 p.m. to 3 p.m., 6 p.m. to 8 p.m.

The DOE sponsored five public meetings in Nevada at which BLM representatives were present. Those meetings were in Armagosa Valley on May 3, in Goldfield on May 4, in Caliente on May 5, in Reno on May 12, and in Las Vegas on May 17. All comments received at the DOE meetings will be considered along with those provided at the BLM scoping meetings. If you have already attended one of these meetings, there is no need to attend a subsequent meeting, unless you desire to provide additional comments. Persons attending the meetings in Tonopah or Pioche may choose to attend either the afternoon or evening sessions.

The DOE has filed an application (NVN 77880) to withdraw a one-mile wide corridor which contains 308,600 acres in Esmeralda, Nye, and Lincoln Counties. A notice of proposed withdrawal was published in the **Federal Register** (68 FR 74965–74968, December 29, 2003). This withdrawal approximates the land encompassed by the Caliente rail corridor as described in the DOE's Final Environmental Impact Statement (EIS) for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada, February 2002. The purpose of the withdrawal is to evaluate the land for the potential construction and operation of a branch rail line for the transportation of spent nuclear fuel and high-level radioactive waste.

The DOE issued a Notice of Intent to Prepare an EIS for the Alignment, Construction, and Operation of a Rail Line to a Geologic Repository at Yucca Mountain, Nye County, Nevada (69 FR 18565–18569, April 8, 2004) announcing public scoping meetings at the times and locations referenced in this notice. The BLM is a cooperating agency in the EIS.

The BLM may need to amend the Caliente Management Framework Plan, Schell Management Framework Plan, Tonopah Resource Management Plan, and the Las Vegas Resource Management Plan to address the proposed construction, operation, and maintenance of a branch rail line. All land use decisions associated with the potential construction, operation, and maintenance of a rail line will be developed through the land use planning amendment process. In addition to the proposed withdrawal, this notice adds land use planning as an issue to the scoping being conducted by the DOE and the BLM.

Additional options for the rail corridor could include the issuance of a Title V right-of-way for the operation of the rail line. Under this alternative the BLM would issue a right-of-way for the development and operation of the rail line.

Public Involvement

Release of the draft amendments to the Caliente Management Framework Plan, Schell Management Framework Plan, Tonopah Resource Management Plan and the Las Vegas Resource Management Plan will be announced in the local news media, as well as the **Federal Register**, as these dates are established.

(Authority: 43 CFR 1610.2(c); 43 CFR 2310.3–1(c)(2))

Dated: May 4, 2004.

Amy L. Lueders,

Associate State Director, Nevada.

[FR Doc. 04–11569 Filed 5–20–04; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of a currently approved information collection (1010–0114).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns the paperwork requirements in the regulations under 30 CFR 250, Subpart A, General.

DATES: Submit written comments by July 20, 2004.

ADDRESSES: Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817.

FOR FURTHER INFORMATION CONTACT: Cheryl Blundon, Rules Processing Team at (703) 787–1600. You may also contact Cheryl Blundon to obtain a copy, at no cost, of the regulations that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 250, Subpart A, General.

OMB Control Number: 1010–0114.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior (Secretary) to prescribe rules and regulations to administer leasing of the

OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

Section 1332(6) of the OCS Lands Act requires that "operations in the [O]uter Continental Shelf should be conducted in a safe manner by well trained personnel using technology, precautions, and other techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstructions to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property or endanger life or health." This authority and responsibility are among those delegated to MMS. To carry out these responsibilities, MMS has issued regulations for leasing and operations on the OCS. The ICR to be submitted to OMB for review and approval concerns the reporting and recordkeeping elements of the 30 CFR 250, Subpart A, General regulations and related Notices to Lessees and Operators.

Federal policy and statutes require us to recover the cost of services that confer special benefits to identifiable non-Federal recipients. Section 250.165 requires a State lessee to pay a fee when applying for a right-of-use and easement on the OCS. The Independent Offices Appropriation Act (31 U.S.C. 9701), OMB Circular A–25, and the Omnibus Appropriations Bill (Pub. L. 104–133, 110 Stat. 1321, April 26, 1996) authorize agencies to collect these fees to reimburse us for the cost to process applications or assessments. This fee is the same as that required for filing pipeline right-of-way applications as specified in § 250.1010(a).

The MMS OCS Regions use the information collected under Subpart A to ensure that formal crane operator and rigger training, inspections, testing and maintenance are carried out; that all new and existing cranes installed on OCS fixed platforms must be equipped with anti-two block safety devices; to assure that uniform methods are employed by lessees for load testing of cranes; and that operations on the OCS are carried out in a safe and pollution-free manner, do not interfere with the rights of other users on the OCS, and balance the development of OCS resources with the protection of the environment.

We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2) and under regulations at 30 CFR 250.196, "Data and information to be made available to the public." No items of a sensitive nature are collected. Responses are mandatory.

Frequency: The frequency varies by section, but is generally "on occasion."

Estimated Number and Description of Respondents: Approximately 1 State and 130 Federal OCS oil and gas or sulphur lessees.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: The currently approved "hour" burden for this information collection is 22,727 hours (we have recently combined the Information Collection burden for Subpart A, General with 22,467 hours and Subpart A—Crane Requirements (1010–0146) with 260 burden hours into this renewal). The following chart details the individual components and respective hour burden estimates of this ICR. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR 250 Subpart A and related forms/NTLs	Reporting or recordkeeping requirement	Hour burden
104; Form MMS–1832	Appeal orders or decisions; appeal INCs	Burden included with 30 CFR 290 (1010–0121).
109(a); 110	Submit welding, burning, and hot tapping plans	2
115; 116	Request determination of well 3 producibility; submit data & information; notify MMS of test.	2
118; 119; 121; 124	Apply for injection or subsurface storage of gas	10
130–133; Form MMS–1832	Submit "green" response copy of form MMS–1832 indicating date violations (INCs) corrected.	2
	Request reconsideration from issuance of an INC	½
	Request waiver of 14-day response time	½
	Notify MMS before returning to operations if shut-in	¼
133	Request reimbursement for food, quarters, and transportation provided to MMS representatives (OCS Lands Act specifies reimbursement; no requests received in many years; minimal burden).	1
135 MMS internal process	Submit PIP under MMS implementing procedures for enforcement actions	40
140	Request various oral approvals not specifically covered elsewhere in regulatory requirements.	¼
141	Request approval to use new or alternative procedures, including BAST not specifically covered elsewhere in regulatory requirements.	20
142	Request approval of departure from operating requirements not specifically covered elsewhere in regulatory requirements.	2
143; 144; 145; Form MMS–1123.	Submit designation of operator & report change of address or notice of termination; submit designation of local agent.	¼
150; 151; 152; 154(a)	Name and identify facilities, etc., with signs	2
150; 154(b)	Name and identify wells with signs	1
160; 161	OCS lessees: Apply for new or modified right of use and easement to construct and maintain off-lease platforms, artificial islands, and installations and other devices; including notifications.	5
165	State lessees: Apply for new or modified right-of-use and easement to construct and maintain off-lease platforms, artificial islands, and installations and other devices.	5

Citation 30 CFR 250 Subpart A and related forms/NTLs	Reporting or recordkeeping requirement	Hour burden
166	State lessees: Furnish surety bond	Burden included with 30 CFR 256 (1010–0006).
168; 170; 171; 172; 174; 175; 177; 180(b), (d).	Request suspension of operations or production; submit schedule of work leading to commencement.	10
	Submit progress reports on SOO or SOP as condition of approval	2
177(a)	Conduct site-specific study; submit results. No instances requiring this study in several years—could be necessary if a situation occurred such as severe damage to a platform or structure caused by a hurricane or a vessel collision.	80
177(b), (c), (d); 182; 183, 185; 194.	Various references to submitting new, revised, or modified exploration plan, development/production plan, or developmentoperations coordination document, and related surveys/reports.	Burden included with 30 CFR 250, Subpart B (1010–0049).
180(a), (f), (g), (h), (i), (j)	Notify and submit report on various leaseholding operations and lease production activities.	½
180(a), (b), (c)	When requested, submit production data to demonstrate production in paying quantities to maintain lease beyond primary term.	6
180(e)	Request more than 180 days to resume operations	3
181(d); 182(b), in 183(b)(2)	Request termination of suspension and cancellation of lease (no requests recent years for termination/cancellation of a lease; minimal burden).	20
184	Request compensation for lease cancellation mandated by the OCS Lands Act (no qualified lease cancellations in many years; minimal burden compared to benefit).	50
190	Submit requests, applications, and notices under various regulations	20
191	Report accidents, deaths, serious injuries, fires, explosions and blowouts	7
191(a)	Report spills of oil	Burden included with 30 CFR 254 (1010–0091).
192; Form MMS–132	Daily report of evacuation statistics for natural occurrence/hurricane (form MMS–132 in the GOMR) when circumstances warrant.	1
193	Report apparent violations or non- compliance	1½
194 NTL exception requests	Request departures from conducting exception archaeological resources surveys and/or submitting reports in GOMR.	1
194(c)	Report archaeological discoveries (only one instance in many years; minimal burden).	1
195	Submit data/information for post-lease G&G activity and request reimbursement	Burden included with 30 CFR 251 (1010–0048).
101–199	General departure or alternative compliance requests not specifically covered elsewhere in Subpart A.	2
	Recordkeeping Requirements	
108(e)	Retain records of design and construction for life of crane, including installation records for any anti-two block safety devices; all inspection, testing, and maintenance for at 4 years; crane operator and all rigger personnel qualifications 4 years.	262
109(b)	Retain welding, burning, and hot tapping plan and approval for the life of the facility.	½
132(b)(3)	Make available all records related to inspections not specifically covered elsewhere in regulatory requirements.	1

Estimated Annual Reporting and Recordkeeping "Non-Hour Cost" Burden: The currently approved annual non-hour cost burden is an application filing fee ($2,350), which is required in § 250.165. This is the only paperwork cost burden identified for the Subpart A regulations.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *". Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Agencies must also estimate the "non-hour cost" burdens to respondents or recordkeepers resulting from the collection of information. The application fee discussed previously is the only identified non-hour cost burdens for the information collection aspects of 30 CFR 250, Subpart A. Therefore, if you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information, monitoring, and record storage facilities. You should

not include estimates for equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

Public Comment Policy: MMS's practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. If you wish your name and/or address to be withheld, you must state this prominently at the beginning of your comment. MMS will honor this request to the extent allowable by law; however, anonymous comments will not be considered. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

MMS Federal Register Liaison Officer: Denise Johnson (202) 208–3976.

Dated: May 11, 2004.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 04–11520 Filed 5–20–04; 8:45 am]

BILLING CODE 4310–MR–U

DEPARTMENT OF THE INTERIOR

National Park Service

Lake Mead National Recreation Area; Environmental Assessment

AGENCY: National Park Service, Interior.

ACTION: Availability of environmental assessment.

SUMMARY: Lake Mead National Recreation Area (NRA) will release for public review an Environmental Assessment (EA) regarding the construction and operation of a wireless telecommunication facility. Cingular Wireless has proposed to construct the facility, referred to as the Saddle Cove site, near the Boulder Maintenance Facility within Lake Mead NRA, a unit of the National Park System. The overall objective of the project is to serve the public interest by providing improved wireless cellular coverage to the area. In order to provide coverage to a sufficient area, new facilities must be located within a search ring so that calls can hand off from existing facilities to the new ones without being lost. The proposed site, which is located in a developed area, is approximately 40′ x 40′ in size, and the proposed facility will include a small building and 120-foot lattice tower mounted with microwave dishes and several antennas.

DATES: The EA will be released for public review on or before June 15, 2004. Written comments must be postmarked no later than July 15, 2004. Copies of the document can be requested from the Office of the Superintendent, or the document can be viewed online at *http://www.nps.gov/lame/pphtml/documents.html.*

ADDRESSES: Comments should be mailed to Superintendent, Lake Mead NRA, 601 Nevada Way, Boulder City, NV 89005, or submitted by e-mail on the park's Web site at *http://www.nps.gov/lame/pphtml/contact.html.*

FOR FURTHER INFORMATION CONTACT: Michael Boyles, Environmental Compliance Specialist, Lake Mead National Recreation Area, (702) 293–8978.

SUPPLEMENTARY INFORMATION: Cingular Wireless worked in cooperation with the National Park Service to prepare the EA. Public scoping occurred between March 15 and April 15, 2004. The park prepared a press release for local media outlets and the park website to announce Cingular's proposal and the intent to prepare an EA. One comment was received, supporting the project based on the increased safety associated with cellular phone coverage.

The park will use the EA and the comments it receives from the public in making its decision as to whether, and under what conditions, to grant the applicant's request for a right-of-way permit for the telecommunications facility. The applicant pays for the processing of the application and, if it is approved, the applicant will pay fair market value for the use of the land. Approval of the request would result in the construction of a 120-foot lattice tower, mounted with a microwave dish and several antennas. Associated equipment would be located in a shelter approximately 10′ by 16′ in size near the base of the tower. Approximately 290 feet of trenching would be necessary to connect the proposed facility to existing utilities. The total area of the site is approximately 40′ by 40′. Access to the site would require grading a 45 foot long road to connect the site to an existing powerline road. The site will be constructed in an area previously disturbed by the construction of Boulder Beach Filtration Plant, Ranger Station, and Maintenance Yard, which are located nearby.

The EA will address impacts to soils and vegetation, wildlife, air quality, scenic quality, cultural resources, visitor experience, safety, and land use. Biological surveys found no threatened or endangered species in the project area. The EA will be sent to agencies, organizations, and individuals on the park's mailing list, and to others who request a copy. Copies of the EA can be requested by writing to the Superintendent, 601 Nevada Way, Boulder City, NV 89005, or the document can be viewed online at *http://www.nps.gov/lame/pphtml/documents.html.*

Dated: May 5, 2004.

Bernard C. Fagan,

Deputy Chief, Office of Policy, National Park Service.

[FR Doc. 04–11471 Filed 5–20–04; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

Mammoth Cave National Park; Environmental Assessment

AGENCY: National Park Service.

ACTION: Notice of document availability.

SUMMARY: (Authority: 16 U.S.C. 3; 16 U.S.C. 5; 16 U.S.C. 79; Director's Order 53). Mammoth Cave National Park will release for public review the Environmental Assessment regarding placement of a wireless telecommunication facility (WTF). Kentucky RSA #3 Cellular General Partnership d/b/a Bluegrass Cellular has proposed to construct a telecommunications facility (WTF) at the Hickory Cabin Fire Tower site within Mammoth Cave National Park, a unit of the National Park Service. It is the responsibility of Mammoth Cave National Park and the purpose of the Environmental Assessment to evaluate the impacts of the proposed wireless telecommunication facility on the park environs. The Environmental Assessment addresses the proposed placement and one alternative placement of the Wireless Telecommunication facility within the park.

DATES: The Environmental Assessment will be released in June 2004 and will be available for public review for at least 30 days at the Office of the Superintendent and online at the Mammoth Cave National Park Web site *http://www.nps.gov/maca/pphtml/documents.html.*

FOR FURTHER INFORMATION CONTACT: Henry Holman, Management Assistant, 270–758–2187.

SUPPLEMENTARY INFORMATION: Copies of the document can be requested by writing to the Superintendent, P.O. Box 7, Mammoth Cave, Kentucky 42259 or by e-mail addressed to *Henry_Holman@nps.gov.*

Dated: April 7, 2004.

Patricia A. Hooks,

Regional Director, Southeast Region.

[FR Doc. 04–11472 Filed 5–20–04; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Prepare an Environmental Impact Statement, Arlington County and Vicinity Rowing Facility, George Washington Memorial Parkway

SUMMARY: In accordance with section 102(2)(c) of the National Environmental Policy Act of 1969, the National Park Service (NPS) is preparing an Environmental Impact Statement (EIS) to assess the impacts of building a boathouse with indoor storage space and floating docks at four possible locations within George Washington Memorial Parkway, two on the shore opposite Theodore Roosevelt Island, one south of the CSX/14th Street Bridges, and another on Daingerfield Island. For each location the EIS will consider the impact of two sizes of boathouse, approximately 10,000 square feet and 14,000 square feet. The proposed facility will house high school rowing programs, provide additional storage bays for the general public, as well as training facilities.

Public Involvement: Public involvement will be a key component in the preparation of the EIS. The NPS will be holding a public scoping meeting sometime during the months of May or June 2004 at a public site in Arlington County to provide the public an opportunity to present ideas, questions, and concerns directly to the planning team. The location and time will be advertised in the local newspapers and media.

The purpose of this meeting is to determine the concerns/issues that should be addressed in the EIS. Individuals unable to attend the scoping meetings may request information from the Superintendent, George Washington Memorial Parkway at the address listed below, or by checking our homepage on the Internet at the following address: *http://www.nps.gov/gwmp/* or *http://www.nps.gov/gwmp/pphtm1/documents.html.*

Comments: If you wish to submit issues or provide input to this initial phase of developing the EIS, you may do so by any one of several methods. In addition to attending scoping meetings, you may mail comments to: Audrey F. Calhoun, Superintendent, George Washington Memorial Parkway, c/o Turkey Run, McLean, Virginia 22101. You may comment via the Internet to *GWMP—Superintendent@nps.gov.* Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: Arlington County and Vicinity Rowing Facility Planning Team" and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, please contact Park Planner Deborah Feldman at the George Washington Memorial Parkway at (703) 289–2512.

Scoping comments should be received no later than 60 days from the publication of this Notice of Intent. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Superintendent Audrey Calhoun, George Washington Memorial Parkway, c/o Turkey Run Headquarters, McLean, Virginia 22101.

Dated: March 22, 2004.

Terry R. Carlstrom,

Regional Director, National Capital Region, National Park Service.

[FR Doc. 04–11470 Filed 5–20–04; 8:45 am]

BILLING CODE 4312–52–M

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1082 and 1083 (Preliminary)]

Chlorinated Isocyanurates From China and Spain

AGENCY: United States International Trade Commission.

ACTION: Institution of antidumping investigations and scheduling of preliminary phase investigations.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping investigations Nos. 731–TA–1082 and 1083 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from China and Spain of chlorinated isocyanurates, provided for in subheading 2933.69.60 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach preliminary determinations in antidumping investigations in 45 days, or in this case by June 28, 2004. The Commission's views are due at Commerce within five business days thereafter, or by July 6, 2004.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: May 14, 2004.

FOR FURTHER INFORMATION CONTACT: Fred Ruggles (202–205–3187), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://*

www.usitc.gov). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted in response to a petition filed on May 14, 2004, by Clearon Corp., Fort Lee, NJ; and Occidental Chemical Corp., Dallas TX.

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on June 4, 2004, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Fred Ruggles (202–205–3187) not later than June 2, 2004, to list their appearance and witnesses (if any). Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before June 9, 2004, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

Issued: May 17, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–11505 Filed 5–20–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1071–1072 (Preliminary)]

Magnesium From China and Russia

Determination

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Russia of pure magnesium, provided for in subheadings 8104.11.00 and 8104.30.00 of the Harmonized Tariff Schedule of the United States (HTS), and imports from China and Russia of alloy magnesium, provided for in subheadings 8104.19.00 and 8104.30.00 of the HTS, that are alleged to be sold in the United States at less than fair value (LTFV).

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce (Commerce) of affirmative preliminary determinations in the investigations under section 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On February 27, 2004, a petition was filed with the Commission and Commerce by U.S. Magnesium Corp., Salt Lake City, UT; United Steelworkers of America, Local 8319, Salt Lake City, UT; and Glass, Molders, Pottery, Plastics & Allied Workers International, Local 374, Long Beach, CA, alleging that an industry in the United States is materially injured by reason of LTFV imports of pure and alloy magnesium from Russia and alloy magnesium from China. Accordingly, effective February 27, 2004, the Commission instituted antidumping duty investigations Nos. 731-TA–1071–1072 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of March 9, 2004 (69 FR 11041). The conference was held in Washington, DC, on March 19, 2004, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on April 12, 2004. The views of the Commission are contained in USITC Publication 3685 (April 2004), entitled *Magnesium from China and Russia: Investigations Nos. 731–TA–1071–1072 (Preliminary).*

Issued: May 17, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–11504 Filed 5–20–04; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than June 1, 2004.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than June 1, 2004.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed in Washington, DC this 4th day of May, 2004.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted between 04/26/2004 and 04/30/2004]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
54,777	Crown Risdon USA, Inc. (Comp)	Danbury, CT	04/26/2004	04/26/2004
54,778	Inflex, Inc. (MN)	Minnetonka, MN	04/26/2004	04/23/2004
54,779	Morgan Adhesives Co. (Wkrs)	N. Las Vegas, NV	04/26/2004	03/24/2004
54,780	Pottstown Metal Welding Company (Comp)	Pottstown, PA	04/26/2004	04/23/2004
54,781	Delta Mills, Inc. (Comp)	Piedmont, SC	04/26/2004	04/15/2004
54,782	B.J. Cutting (PA)	Hazleton, PA	04/27/2004	04/22/2004
54,783	Eighth Floor Promotions (Wkrs)	Bloomington, MN	04/27/2004	04/26/2004
54,784	Security Force (Wkrs)	Georgetown, SC	04/27/2004	04/26/2004
54,785	AVX Corp. (Wkrs)	Myrtle Beach, SC	04/27/2004	04/26/2004
54,786	Royce Hosiery, LLC (Wkrs)	Martinsburg, WV	04/27/2004	04/22/2004
54,787	Light Artistry, Inc. (Comp)	Pottsville, PA	04/27/2004	04/16/2004
54,788	Quadco, Inc (Comp)	Anchorage, AK	04/27/2004	04/26/2004
54,789	Edenton Dyeing and Finishing, LLC (Comp)	Edenton, NC	04/27/2004	04/22/2004
54,790	Bourns MMC, Inc. (Wkrs)	New Berlin, WI	04/27/2004	04/26/2004
54,791	Meridian Automotive Systems, Inc. (Comp)	Lenoir, NC	04/27/2004	04/19/2004
54,792	M and G Polymers USA, LLC (Wkrs)	Apple Grove, WV	04/27/2004	04/26/2004
54,793	Pyrotek (Wkrs)	Trenton, TN	04/27/2004	04/22/2004
54,794	Imperial Home Decor Group (WKRS)	Beachwood, OH	04/28/2004	04/21/2004
54,795	Kawai America Manufacturing, Inc. (Comp.)	Lincolnton, NC	04/28/2004	04/22/2004
54,796	Venture Industries (WKRS.)	Lancaster, OH	04/28/2004	04/23/2004
54,797	American Firelog Corp. of Ohio (Wkrs.)	Akron, OH	04/28/2004	04/21/2004
54,798	Band B Pacing Workshop (Comp.)	Strong, ME	04/28/2004	04/20/2004
54,799	Northland Extension Drills Inc. (State)	Grove City, MN	04/28/2004	04/27/2004
54,800	Johnson Controls Inc. (Comp.)	Holland, MI	04/28/2004	04/08/2004
54,801	Three Rivers Warehouse (Comp.)	Muskogee, OK	04/28/2004	04/21/2004
54,802	New Roads, Inc. (Wkrs.)	Martinsville, VA	04/28/2004	04/22/2004
54,803	Saint Gobain Performance Plastics (State)	Garden Grove, CA	04/28/2004	04/19/2004
54,804	Southern Glove Manufacture Co., Inc. (Comp.)	Duffield, VA	04/28/2004	04/19/2004
54,805	Plastek Industries (Wkrs.)	Erie, PA	04/28/2004	04/10/2004
54,806	Endwave (State)	Diamond Spring, CA	04/28/2004	04/19/2004
54,807	Robert Bosch Corporation (Wkrs.)	Gallatin, TN	04/29/2004	04/19/2004
54,808	Gateway Country Store (Wkrs.)	Indianapolis, IN	04/29/2004	04/26/2004
54,809	Hot Wax Candle Co. (Comp.)	Greensboro, NC	04/29/2004	04/08/2004
54,810	Webb Furniture Ent. Inc. (Comp.)	Galax, VA	04/29/2004	04/28/2004
54,811	Rock-Tenn Comp. (Comp.)	Wright City, MO	04/29/2004	04/26/2004
54,812	Vesuvius USA (Wkrs.)	Altoona, PA	04/29/2004	04/28/2004
54,813	W L Jacquard LLC (Comp)	Cliffside, NC	04/30/2004	04/29/2004

APPENDIX—Continued

[Petitions instituted between 04/26/2004 and 04/30/2004]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
54,814	Alyeska Pipeline Service Co. (Comp)	Anchorage, AK	04/30/2004	04/28/2004
54,815	JamiServices, Corp. (Wkrs)	Bishopville, SC	04/30/2004	04/28/2004
54,816	Phipps Pattems, Inc. (Wkrs)	Decatur, IL	04/30/2004	04/16/2004
54,817	RHC/Spacemaster Corp. (Wkrs)	Melrose Park, IL	04/30/2004	04/27/2007
54,818	Franklin Electri (IAM)	Muskegon, MI	04/30/2004	04/28/2004
54,819	Stetson Hat (Hatco) (UNITE)	St. Joseph, MO	04/30/2004	04/26/2004
54,820	Moosehead Manufacturing (ME)	Monson, ME	04/30/2004	04/07/2004
54,821	Burlington Industries (Comp)	Greensboro, NC	04/30/2004	04/15/2004
54,822	Honeywell (Wkrs)	Clearfield, UT	04/30/2004	04/09/2004
54,823	Ehlert Tool (WI)	New Berlin, WI	04/30/2004	04/30/2004
54,824	Saftronics (Wkrs)	York, PA	04/30/2004	04/29/2004
54,825	Utica Enterprises, Inc. (MI)	Shelby Twp., MI	04/30/2004	04/20/2004
54,826	First Technology, Inc. (Comp)	Caribou, ME	04/30/2004	04/07/2004
54,827	Harris Fresh, LLC (Comp)	Coalinga, CA	04/30/2004	04/16/2004
54,828	Caraustar (UNITE)	Cedartown, GA	04/30/2004	04/02/2004
54,829	Manpower (Comp)	Poughkeepsie, NY	04/30/2004	04/23/2004
54,830	ITT Industries (Comp)	New Lexington, OH	04/30/2004	04/13/2004

[FR Doc. 04–11496 Filed 5–20–04; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor (DOL), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection: Applications to Employ Special Industrial Homeworkers and Workers with Disabilities (Forms WH–2, WH–226 and WH–226A). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before July 20, 2004.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, E-mail *bell.hazel@dol.gov*. Please use only one method of transmission for comments (mail, fax or E-mail).

SUPPLEMENTARY INFORMATION

I. Background

Fair Labor Standards Act (FLSA) section 11(d) authorizes the Secretary of Labor to regulate, restrict or prohibit industrial homework as necessary to prevent evasion of the minimum wage requirement of the Act. DOL restricts homework in seven industries (knitted outerwear, women's apparel, jewelry manufacturing, gloves and mittens, button and buckle manufacturing, handkerchief manufacturing and embroideries) to those employers who obtain certificates.

In order to prevent curtailment of employment opportunities for persons with disabilities, FLSA section 14(c) allows employers to apply for a certificate from DOL authorizing payment of less than the Federal minimum wage to workers with impaired productivity because of disabilities.

Employers in a restricted industry use Form WH–2, when requesting permission to employ an individual industrial homeworker who is unable to work in a factory setting because he or she (a) is unable to adjust to such work because of age, or physical or mental disability; (b) is unable to leave home because his or her presence is required to care for an invalid in the home or (c) will be engaged in industrial homework under the supervision of a State Vocational Rehabilitation Agency.

Employers use Form WH–226 and the supplemental data Form WH–226A when requesting authorization to employ workers with disabilities in competitive employment, in work centers and in hospitals or institutions at subminimum wages that are commensurate with wages paid to workers with no disabilities. School officials also use this form to request authorization for groups of students with disabilities to participate in school work experience programs. State vocational rehabilitation counselors and Veterans Administration officials use the form to grant or extend temporary authorization to employ on-the-job trainees with disabilities.

This information collection is currently approved for use through November 30, 2004.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the

use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

DOL seeks approval for the extension of this information collection in order to ensure effective administration of agency programs regarding the employment of homeworkers in restricted industries and payment of subminimum wages to workers with disabilities.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Applications to Employ Special Industrial Homeworkers and Workers with Disabilities.

OMB Number: 1215–0005.

Agency Number: WH–2, WH–226, WH–226A.

Affected Public: Business or other for-profit, Individuals or household, Not-for-profit institutions, Farms, State, Local or Tribal Government.

Total Respondents: 4,550.

Total Responses: 16,550.

Form	Number of respondents	Number of responses	Time per response (in minutes)	Burden hours
WH–2	50	50	30	25
WH–226	4,500	4,500	45	3,375
WH–226A	4,500	12,000	45	9,000

Frequency: Annually and Biennially.

Estimated Total Burden Hours: 12,400.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $1,820.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: May 17, 2004.

Sue R. Blumenthal,

Acting Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 04–11495 Filed 5–20–04; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of Marcy 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal Statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determinations decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon Act And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Connecticut
CT030008 (Jun. 13, 2003)
Maine
ME030012 (Jun. 13, 2003)
New Hampshire

NH030011 (Jun. 13, 2003)
New Jersey
NJ030006 (Jun. 13, 2003)
New York
NY030001 (Jun. 13, 2003)
Rhode Island
RI030005 (Jun. 13, 2003)

Volume II

Delaware
DE030008 (Jun. 13, 2003)
Maryland
MD030001 (Jun. 13, 2003)
MD030006 (Jun. 13, 2003)
MD030021 (Jun. 13, 2003)
MD030028 (Jun. 13, 2003)
MD030029 (Jun. 13, 2003)
MD030037 (Jun. 13, 2003)
MD030039 (Jun. 13, 2003)
MD030042 (Jun. 13, 2003)
MD030045 (Jun. 13, 2003)
MD030058 (Jun. 13, 2003)
Pennsylvania
PA030002 (Jun. 13, 2003)
PA030005 (Jun. 13, 2003)
PA030006 (Jun. 13, 2003)
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PA030040 (Jun. 13, 2003)
PA030050 (Jun. 13, 2003)
PA030051 (Jun. 13, 2003)
PA030059 (Jun. 13, 2003)
PA030060 (Jun. 13, 2003)
PA030061 (Jun. 13, 2003)

Volume III

None.

Volume IV

Michigan
MI030001 (Jun. 13, 2003)
MI030002 (Jun. 13, 2003)
MI030003 (Jun. 13, 2003)
MI030004 (Jun. 13, 2003)
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MI030100 (Jun. 13, 2003)
MI030101 (Jun. 13, 2003)
MI030103 (Jun. 13, 2003)
MI030105 (Jun. 13, 2003)
MI030106 (Jun. 13, 2003)

Volume V

Louisiana
LA030005 (Jun. 13, 2003)
LA030006 (Jun. 13, 2003)
LA030014 (Jun. 13, 2003)
LA030015 (Jun. 13, 2003)
Nebraska
NE030001 (Jun. 13, 2003)
NE030003 (Jun. 13, 2003)
NE030005 (Jun. 13, 2003)
NE030010 (Jun. 13, 2003)
NE030011 (Jun. 13, 2003)
NE030019 (Jun. 13, 2003)
Texas
TX030010 (Jun. 13, 2003)
TX030015 (Jun. 13, 2003)
TX030055 (Jun. 13, 2003)
TX030060 (Jun. 13, 2003)
TX030061 (Jun. 13, 2003)
TX030062 (Jun. 13, 2003)

Volume VI

None.

Volume VII

California
CA030001 (Jun. 13, 2003)
CA030002 (Jun. 13, 2003)
CA030019 (Jun. 13, 2003)
CA030023 (Jun. 13, 2003)
CA030025 (Jun. 13, 2003)
CA030028 (Jun. 13, 2003)
CA030035 (Jun. 13, 2003)
CA030036 (Jun. 13, 2003)
CA030037 (Jun. 13, 2003)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage determinations Issued Under the Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *http://www.access.gpo.gov/davisbacon*. They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed in Washington, DC this 13th day of May, 2004.

Terry Sullivan,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 04–11272 Filed 5–20–04; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 04–069]

NASA Advisory Council, Education Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

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 announces a meeting of the NASA Advisory Council, Education Advisory Committee.

DATES: Thursday, June 24, 2004, Noon to 5:45 p.m.; Friday, June 25, 2004, 8:30 a.m. to Noon.

ADDRESSES: Hilton Houston NASA Clear Lake, 3000 NASA Road 1, Houston, TX 77058.

FOR FURTHER INFORMATION CONTACT: Ms. Mei Mei Peng, Code N, National Aeronautics and Space Administration, Washington, DC, 20546, (202) 358–1614.

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:

—Introduction by Dr. William Harvey, Chairman of the NASA Education Advisory Committee

—Comments by Dr. Adena Williams Loston, Associate Administrator for Education

—Presentation on the Impact of the Educator Astronaut Program on Elementary and Secondary Education by Ms. Barbara Morgan, Educator Astronaut

—Updates in relation to recommendations from the February 2004 Education Advisory Committee Meeting

—Open discussion and a review of action items from the February 2004 Education Advisory Committee Meeting

Persons with disabilities who require assistance should indicate this. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

R. Andrew Falcon,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 04–11459 Filed 5–20–04; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 04–070]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

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 announces a meeting of the NASA Advisory Council (NAC).

DATES: Tuesday, June 8, 2004, 8 a.m. to 3:30 p.m; and Wednesday, June 9, 2004, 8 a.m. to 3 p.m.

ADDRESSES: National Aeronautics and Space Administration, 300 E Street, SW., Washington, DC 20546, MIC 6.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Dakon, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0732.

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:

- Vision for Space Exploration
- NASA Office of Exploration Systems
- Update on Return to Flight
- Information Technology Working Group Activities

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; visa/green card information (number, type, expiration date); employer/affiliation information (name of institution, address, county, phone); and title/position of attendee. To expedite admittance, attendees can provide identifying information in advance by contacting Ms. Marla K. King via e-mail at *marla.k.king@nasa.gov* or by telephone at (202) 358–1148. Persons with disabilities who require assistance should indicate this. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

R. Andrew Falcon,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 04–11577 Filed 5–20–04; 8:45 am]

BILLING CODE 7510–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR part 21, Report of Defects and Noncompliance.

2. *Current OMB approval number:* 3150–0035.

3. *How often the collection is required:* On occasion.

4. *Who is required or asked to report:* All directors and responsible officers of firms and organizations building, operating, or owning NRC licensed facilities as well as directors and responsible officers of firms and organizations supplying basic components and safety related design, analysis, testing, inspection, and consulting services of NRC licensed facilities or activities.

5. *The number of annual respondents:* 36 respondents.

6. *The number of hours needed annually to complete the requirement or request:* 7,790 hours (5,112 for reporting and 2,678 for recordkeeping) and total of 142 hours per each response and 74 hours per each recordkeeper.

7. *Abstract:* 10 CFR part 21 implements section 206 of the Energy Reorganization Act of 1974, as amended. It requires directors and responsible officers of firms and organizations building, operating, owning, or supplying basic components to NRC licensed facilities or activities to report defects and noncompliance that could create a substantial safety hazard at NRC licensed facilities or activities.

Organizations subject to 10 CFR part 21 are also required to maintain such records as may be required to assure compliance with this regulation.

The NRC staff reviews 10 CFR part 21 reports to determine whether the reported defects in basic components and related services and failure to comply at NRC licensed facilities or activities are potentially generic safety problems.

Submit, by July 20, 2004, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html*. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton (T–5 F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail to *INFOCOLLECTS@NRC.GOV*.

Dated at Rockville, Maryland, this 17th day of May 2004.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 04–11509 Filed 5–20–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–255]

Nuclear Management Company, LLC, Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–20 issued to Nuclear Management Company, LLC, (the licensee) for operation of the Palisades Plant located in Van Buren County, Michigan.

The proposed amendment would replace existing License condition 2.C.(5) and its corresponding table, with a new license condition stating that performance of Technical Specification surveillance requirement 3.1.4.3 is not required for control rod drive 19 only, until the next refueling outage, but no later than September 30, 2004.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the Code of Federal Regulations (10 CFR), Section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Nuclear Management Company, LLC (NMC) has evaluated whether or not a significant hazards consideration is involved with the proposed amendment by focusing on the three standards set forth in 10 CFR 50.92, "Issuance of Amendment," as discussed below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed license amendment deletes outdated information from the operating license and adds a license condition to delay testing of one control rod from the Palisades Technical Specification surveillance requirement for partial movement every 92 days. The proposed License Condition does not affect or create any accident initiators or precursors. As such, the proposed license condition does not increase the probability of an accident.

The proposed license amendment does not significantly increase the consequences of an accident. The safety analyses assume full-length control rod insertion, except the most reactive rod, upon reactor trip. The proposed surveillance requirement (SR) extension request does not increase the allowed outage time of any required operable structures, systems, or components (SSCs), and does not reduce the requirement to know that the deferred SR could be met at all times. Deferral of testing does not, by itself, increase the potential that the testing would not be met. The ability to move a full-length control rod by its drive mechanism is not an initial assumption used in the safety analyses. Control rod drop times are verified during performance of a surveillance that is normally performed during refueling outages. NMC has determined that control rod drive (CRD) seal leakage does not increase the likelihood of an untrippable control rod. Therefore, the assumptions of the safety analyses will be maintained, and the consequences of an accident will not be increased significantly.

Deleting the existing license condition 2.C.(5) and Table 2.C.(5) is administrative, since the provision has expired, and has no impact on plant operation or equipment.

Therefore, operation of the facility in accordance with the proposed License Condition would 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.

The proposed license condition does not involve a physical alteration of any SSC or change the way any SSC is operated. The proposed license condition does not involve operation of any required SSCs in a manner or configuration different from those previously recognized or evaluated. No new failure mechanisms will be introduced by the SR deferral being requested.

Deleting the existing license condition 2.C.(5) and Table 2.C.(5) is administrative, since the provision has expired, and has no impact on plant operation or equipment.

Therefore, the proposed amendment does 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?

Response: No.

The safety analyses assume full-length control rod insertion, except the most reactive rod, upon reactor trip. The proposed License Condition does not, by itself, introduce a failure mechanism. Past performance of the SR in question has demonstrated reliability in passing the deferred SR. The proposed license condition

does not involve any physical changes to the plant or manner in which the plant is operated. The ability to move a full-length control rod by its drive mechanism is not an initial assumption used in the safety analyses. Control rod drop times are verified during performance of a surveillance that is normally performed during refueling outages. NMC has determined that CRD seal leakage does not increase the likelihood of an untrippable control rod.

Therefore, the assumptions of the safety analyses will be maintained, and the margin of safety is not reduced significantly.

Deleting the existing license condition 2.C.(5) and Table 2.C.(5) is administrative, since the provision has expired, and has no impact on plant operation or equipment.

Therefore, the proposed amendment would 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.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.309, 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 by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/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 requestors/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the

Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)–(viii).

A request for a hearing 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*; 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*. A copy of the request for hearing and petition for leave to intervene should also be sent to Jonathan Rogoff, Esquire, Vice President, Counsel & Secretary Nuclear Management Company, LLC, 700 First Street, Hudson, WI 54016, attorney for the licensee.

For further details with respect to this action, see the application for amendment dated May 10, 2004, which is available for public inspection at the Commission's PDR, located at One White Flint North, File Public Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 14th day of May 2004.

For the Nuclear Regulatory Commission.

John Stang,

Project Manager, Section I, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 04–11508 Filed 5–20–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–1113]

Global Nuclear Fuel—Americas, LLC, Environmental Assessment and Finding of No Significant Impact Related to Proposed Exemption From Fissile Classification and Fissile Material Package Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Finding of no significant impact and environmental assessment.

FOR FURTHER INFORMATION CONTACT: Kevin M. Ramsey, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T–8A33, Washington, DC 20555–0001, telephone (301) 415–7887 and e-mail *kmr@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of an amendment to NRC Materials License SNM–1097 to allow a one-time exemption from fissile material classification and the fissile material package requirements in 10 CFR 71.55 and the standards for arrays of fissile material packages in 10 CFR 71.59 for the shipment of certain radioactive waste materials by Global Nuclear Fuel—Americas, LLC (GNF or licensee) to a disposal facility and to impose license conditions on the shipment. The NRC has prepared an Environmental Assessment (EA) in support of this action. Based upon the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate and, therefore, an Environmental Impact Statement (EIS) will not be prepared.

II. Environmental Assessment

Background

GNF is authorized under NRC Materials License SNM–1097 to manufacture nuclear reactor fuel utilizing special nuclear material (SNM), specifically low-enriched uranium. During operation, GNF has accumulated a large amount of noncombustible materials contaminated with small amounts of fissile material (legacy materials). The legacy materials include piping, equipment parts, ceiling tiles, and concrete blocks. GNF believes that it will difficult and burdensome to demonstrate that this material meets the present regulatory requirements in 10 CFR 71.53 for exemption from fissile material classification and from the fissile material package standards of 10 CFR 71.55 and 71.59.

On January 26, 2004, NRC published a final rule amending its regulations in 10 CFR Part 71 on packaging and transporting radioactive material, "Compatibility with IAEA Transportation Safety Standards (TS-R–1) and Other Transportation Safety Amendments," (69 FR 3698; January 26, 2004). The final rule, in part, makes changes in fissile material exemption requirements to address the unintended economic impacts of NRC's emergency final rule, "Fissile Material Shipments and Exemptions," (62 FR 5907; February 10, 1997). In particular, the revised requirements for exemption from classification as fissile material (placed in revised 10 CFR 71.15) provide greater flexibility to licensees shipping radioactive material than is provided in 10 CFR 71.53. The effective date of the final rule is October 1, 2004.

On April 19, 2004, GNF requested permission to use the revised fissile material exemption in 10 CFR 71.15(c) prior to October 1, 2004. Use of this revised requirement would allow GNF to ship approximately 800 containers of legacy materials without these legacy materials being classified as fissile materials and without needing to comply with the fissile material packaging requirements of 10 CFR 71.55 and 71.59. Because GNF wants to make this shipment before the effective date of the amended part 71 final rule, the provisions of amended 10 CFR 71.15 are unavailable to GNF. However, under the provisions of 10 CFR 71.8, NRC may grant an exemption from the requirements of the regulations in part 71 that it determines is authorized by law and will not endanger life or property nor the common defense and security. Accordingly, NRC is considering issuing an exemption to GNF from fissile material classification and from the fissile material packaging requirements of 10 CFR 71.55 and 71.59, together with conditions that would be placed in the license to govern this one-time shipment of approximately 800 containers of legacy materials. The purpose of this document is to assess the environmental consequences of the

proposed exemption and proposed license conditions.

Review Scope

The purpose of this EA is to assess the environmental impacts of issuing a license amendment to GNF which grants an exemption from fissile classification and from 10 CFR 71.55 and 71.59 and imposes conditions on the shipment of approximately 800 containers of legacy materials. It does not approve issuance of the license amendment. This assessment will determine whether to issue a FONSI or to prepare an EIS. Should NRC issue a FONSI, no EIS will be prepared.

Proposed Action

The proposed action is to amend NRC Materials License SNM–1097 to exempt the licensee from fissile material classification and from fissile material package standards in 10 CFR 71.55 and 71.59 for a one-time shipment of approximately 800 containers of legacy materials and to impose the following conditions on this shipment:

Fissile material meeting the following requirements is exempt from classification as fissile material and from the fissile material package standards of 10 CFR 71.55 and 71.59, but is subject to all other requirements of 10 CFR Part 71:

(1) Low concentrations of solid fissile material commingled with solid nonfissile material, provided that:

(i) There is at least 2000 grams of solid nonfissile material for every gram of fissile material, and

(ii) There is no more than 180 grams of fissile material distributed within 360 kilograms of contiguous nonfissile material.

(2) Lead, beryllium, graphite, and hydrogenous material enriched in deuterium may be present in the package, but must not be included in determining the required mass of solid nonfissile material.

These conditions are required to provide reasonable assurance that the material will not pose an unsafe criticality hazard during transport.

Purpose and Need for Proposed Action

GNF is currently manufacturing nuclear reactor fuel at its Wilmington, NC facility. It is requesting the license amendment to facilitate the transport and subsequent disposal of approximately 800 containers of legacy materials stored at the site. The licensee has a contract with a disposal site that will expire before October 1, 2004. In order to ship these materials under its existing contract, it must obtain an exemption from fissile material classification and from the fissile material package requirements for this shipment.

Alternatives

The alternatives available to NRC are:

1. Approve the license amendment as above-described;

2. No action (*i.e.*, deny issuance of the license amendment)

Affected Environment

The affected environment for the proposed action would be the immediate vicinity of the vehicle used to transport the material.

The affected environment for no action is the GNF site. A full description of the site and its characteristics is given in the 1997 EA for the renewal of Special Nuclear Material License No. SNM–1097 (NRC, May 1997). The GNF facility is located on a site of about 1664 acres in New Hanover County, North Carolina, approximately 6 miles north of the city of Wilmington.

Environmental Impacts of Proposed Action

The risk to human health from the transportation of all radioactive material in the U.S. was evaluated in the "Final Environmental Impact Statement on the Transportation of Radioactive Material by Air and Other Modes," NUREG–0170 (NRC, 1977). The principal radiological environmental impact during normal transportation is direct radiation exposure to nearby persons from radioactive material in the package. The average annual individual dose from all radioactive material transportation in the U.S. was calculated to be approximately 0.5 mrem, well below the 10 CFR part 20 requirement of 100 mrem for a member of the public. The proposed action would result in additional shipments. Additional shipments would expose more members of the public to radiation, increase nonradiological truck emissions, and increase the risk of injuries from traffic accidents. However, the increases would be so small that the differences would be negligible.

Occupational health was also considered in the Final Environmental Impact Statement on the Transportation of Radioactive Material by Air and Other Modes (NRC, 1977). The average annual occupational dose to the driver(s) is estimated to be 8.7 mSv (870 mrem), which is below the 10 CFR part 20 requirement of 50 mSv (5000 mrem). The Department of Transportation (DOT) regulations in 49 CFR 177.842(g) require that the radiation dose rate may not exceed 0.02 mSv (2 mrem) per hour in any position normally occupied in a motor vehicle. The proposed action would not cause dose rates to the driver exceeding the DOT limit.

The possibility of a criticality accident due to transportation of this material was evaluated during the development of the new rule containing the fissile material classification exemption, the substance of which is to be incorporated into the license as a condition for the one-time shipment planned by GNF. The results of the evaluation are documented in NUREG/CR–5342, "Assessment and Recommendations for Fissile Material Packaging Exemptions and General Licenses Within 10 CFR part 71" (NRC, 1998). The evaluation concluded that the mass limits in the exemptions could be safely increased to provide greater flexibility to licensees shipping radioactive material. In addition, an EA was prepared and a FONSI was published in Section VIII of the final rule amending 10 CFR part 71 (NRC, January 2004). The EA explicitly considered the potential environmental impacts of the revised fissile material exemptions.

Under the proposed action, the doses to the public and to the workers are not increased beyond those considered in the Final Environmental Impact Statement on the Transportation of Radioactive Material by Air and Other Modes (NRC, 1977). Therefore, shipment of these materials as proposed would be consistent with the assessment of environmental impacts and the conclusions in the Final Environmental Impact Statement on the Transportation of Radioactive Material by Air and Other Modes (NRC, 1977).

The NRC has determined that the approval of the proposed amendment will not have a significant impact on effluent releases, environmental monitoring, water resources, geology, soils, air quality, demography, biota, or cultural or historic resources under normal transport conditions.

Environmental Impacts of No Action Alternative

Denying this amendment request would result in the continued storage of a large amount of contaminated material on the licensee's site. Although the risk of a release is low, the risk would remain. In addition, the material poses an ever-increasing financial liability because disposal must still be accomplished before the facility can be decommissioned and released for unrestricted use.

The occupational health impacts would not change significantly as a result of denial of this amendment request. Occupational doses at the

facility may be slightly higher as a result of the need to continue surveillance and maintenance activities; however, the facility will continue to implement NRC-approved, radiation safety procedures for handling radioactive materials. Thus, the dose to workers under the no action alternative will remain within acceptable regulatory limits.

The NRC has determined that denial of the proposed amendment will not have a significant impact on effluent releases, environmental monitoring, water resources, geology, soils, air quality, demography, biota, or cultural or historic resources at or near the GNF site.

Based on its review, the NRC has concluded that the environmental impacts associated with the proposed action are insignificant and, therefore, do not warrant denial of the proposed license amendment. The NRC has determined that the proposed action, approval of the license amendment as described, is the appropriate alternative for selection. Based on an evaluation of the environmental impacts of the proposed license amendment, the NRC has determined that the proper action is to issue a FONSI in the **Federal Register**.

Agencies and Persons Contacted

On May 6, 2004, the NRC staff provided the draft EA and FONSI to staff from the North Carolina Department of Environmental and Natural Resources (DENR). On May 7, 2004, the DENR Radiation Protection Section responded that it had no comments.

The NRC staff has determined that the proposed action is not a type of activity that has potential to cause effects on historical properties because it is administrative in nature. Therefore, no consultation is required under Section 106 of the National Historic Preservation Act.

The NRC staff has determined that the proposed action is not a type of activity that has potential to effect threatened or endangered species, or critical habitat because it is administrative in nature. Therefore, no consultation is required under Section 7 of the Endangered Species Act.

References

U.S. Nuclear Regulatory Commission (NRC), December 1977, NUREG–0170, "Final Environmental Impact Statement on the Transportation of Radioactive Material by Air and Other Modes," Accession No. ML022590265.

U.S. Nuclear Regulatory Commission (NRC), February 10, 1997, "Fissile Material Shipments and Exemptions," Emergency Final Rule, 10 CFR Part 71, 62 FR 5907.

U.S. Nuclear Regulatory Commission (NRC), May 1997, "Environmental Assessment for Renewal of Special Nuclear Material License SNM–1097," Legacy Accession No. 9705080142.

U.S. Nuclear Regulatory Commission (NRC), July 1998, NUREG/CR–5342, "Assessment and Recommendations for Fissile Material Packaging Exemptions and General Licenses Within 10 CFR Part 71."

U.S. Nuclear Regulatory Commission (NRC), January 26, 2004, "Compatibility With IAEA Transportation Safety Standards (TS–R–1) and Other Transportation Safety Amendments," Final Rule, 10 CFR Part 71, 69 FR 3698.

Global Nuclear Fuel—Americas LLC (GNFA), April 19, 2004, "Exemption Request," ADAMS No. ML041190402.

III. Final Finding of No Significant Impact

Pursuant to 10 CFR part 51, the NRC has considered the environmental consequences of amending NRC Materials License SNM–1097 to exempt GNF from fissile material classification and from the fissile material package requirements in 10 CFR 71.55 and 71.59 for a one-time shipment of approximately 800 containers of legacy materials and to impose license conditions on the shipment. On the basis of this assessment, the Commission has concluded that environmental impacts associated with the proposed action would not be significant and the Commission is making a finding of no significant impact. Accordingly, preparation of an EIS is not warranted.

IV. Further Information

For further details, see the references listed above. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Room O–1F21, 11555 Rockville Pike, Rockville, Maryland. In addition, documents related to this proposed action will be available electronically for public inspection from the NRC Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* (the Public Electronic Reading Room). Persons who do not have access to ADAMS, or who encounter problems accessing documents in ADAMS, should contact the PDR reference staff at (800) 397–4209 or (301) 415–4737, or by e-mail at *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 14th day of May 2004.

For the Nuclear Regulatory Commission.

Robert C. Pierson,

Director, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 04–11510 Filed 5–20–04; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49711; File No. S7–24–89]

Joint Industry Plan; Order Granting Approval of Amendment No. 13A of the Reporting Plan for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis, Submitted by the National Association of Securities Dealers, Inc., the Boston Stock Exchange, Inc., the Chicago Stock Exchange, Inc., the Cincinnati Stock Exchange, Inc., the Pacific Exchange, Inc., the American Stock Exchange LLC, and the Philadelphia Stock Exchange, Inc.

May 14, 2004.

I. Introduction

On October 31, 2003, the Cincinnati Stock Exchange, Inc. ("CSE") on behalf of itself and the National Association of Securities Dealers, Inc. ("NASD"), the American Stock Exchange LLC ("Amex"), the Boston Stock Exchange, Inc. ("BSE"), the Chicago Stock Exchange, Inc. ("CHX"), the Pacific Exchange, Inc. ("PCX"), and the Philadelphia Stock Exchange, Inc. ("PHLX") (hereinafter referred to as "Participants"), as members of the operating committee ("Operating Committee" or "Committee") [1] of the Plan submitted to the Securities and Exchange Commission ("SEC" or "Commission") a proposal to amend the Plan ("Amendment 13A") [2] pursuant to Rule 11Aa3–2 [3] and Rule 11Aa3–1 [4] under the Securities Exchange Act of 1934 ("Act" or "Exchange Act"). The proposal reflects several changes unanimously adopted by the Committee.[5] Amendment 13A was

[1] The Committee is made up of all the Participants.

[2] The Commission notes that CSE recently changed its name to National Stock Exchange. However, a Plan amendment that would change the name of CSE to National Stock Exchange for Plan purposes has not been submitted to the Commission. *See* Securities Exchange Act Release No. 48774 (November 12, 2003), 68 FR 65332 (November 19, 2003) (File No. SR–CSE–2003–12).

[3] 17 CFR 240.11Aa3–2.

[4] 17 CFR 240.11Aa3–1.

[5] CSE was chair of the Operating Committee at the time the 13A Amendment was filed with the Commission. Subsequently, PCX and its subsidiary

Continued

published for comment in the **Federal Register** on February 3, 2004.[6] The Commission received no comment letters on Amendment 13A.

II. Description and Purpose of the Amendment

The Commission originally approved the Plan on a pilot basis on June 26, 1990.[7] The parties did not begin trading until July 12, 1993, accordingly, the pilot period commenced on July 12, 1993. The Plan has since been in operation on an extended pilot basis.[8]

By way of background, the Operating Committee submitted the Amendment 13 to the Nasdaq UTP Plan (Amendment 13") to address amendments related to (1) The Nasdaq Stock Market, Inc.'s ("Nasdaq") separation from NASD and anticipated registration as a national securities exchange, and (2) the implementation of an Internal Securities Information Processor ("Internal SIP") designed to separate Nasdaq's functions as a securities market from its functions as the securities information processor ("SIP" or "Processor") for the Nasdaq UTP Plan. The Internal SIP began operating in July 2002. The Legacy securities information processing system application (the "Legacy SIP") operated in parallel with this new system until March 31, 2003. In addition, certain other changes raised during the Operating Committee deliberations were proposed as part of Amendment 13. The changes in Amendment 13 were grouped in four categories:

Category 1: changes that would become effective upon Nasdaq's exchange registration;

Category 2: changes that would become effective upon the launch of the Internal SIP;

Category 3: changes that would become effective upon the end of the parallel period and the elimination of the Legacy SIP; and

Category 4: changes where timing was not an issue. The changes detailed in Categories 2, 3 and 4 were approved by the Commission.[9] The changes detailed in Category 1 have not been approved because Nasdaq's exchange registration has not been approved.

The NASD, acting through its subsidiary, Nasdaq, proposed Amendment 13A to address changes to the Plan related to the elimination of the Legacy SIP. As a condition to its decision to sunset the operation of the Legacy SIP on March 31, 2003, the Operating Committee determined to adopt the proposed changes contained in Amendment 13A. As described below, the proposed Amendment 13A also affects certain changes proposed in the Amendment 13, Category 1 revisions currently pending approval with the Commission.[10]

These proposed changes clarify the operation of the Internal SIP pending Nasdaq's exchange registration. The following is a summary of the changes to the Plan proposed in Amendment 13A.

1. Section III.T. of the Plan,[11] which defines "Quotation Information," would be amended to reflect that both the NASD Alternative Display Facility and the Nasdaq markets send individual market participant information to the Processor.[12]

2. Section III.Z. of the Plan would redefine "NQDS."[13] "NQDS" will now be defined as "the data stream of information that provides the best quotations and sizes from each Nasdaq Participant." In addition, Section III.Z. would add a definition for "Nasdaq Participant," which is "an entity that is registered as a market maker or an electronic communications network in Nasdaq or otherwise utilizes the facilities of Nasdaq pursuant to applicable NASD rules but does not include an NASD Participant as defined in Section III.G. of this Plan." A definition of NASD Participant would be added in Section III.G.[14] Sections III.G through III.X. would be accordingly

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the Archipelago Exchange were elected co-chairs of the Operating Committee for the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis ("Nasdaq UTP Plan" or "Plan") by the Participants.

[6] See Securities Exchange Act Release No. 49137 (January 28, 2004), 69 FR 5217 (February 3, 2004).

[7] See Securities Exchange Act Release No. 28146, 55 FR 27917 (July 6, 1990) ("1990 Plan Approval Order").

[8] See Securities Exchange Act Release Nos. 34371 (July 13, 1994), 59 FR 37103 (July 20, 1994); 35221 (January 11, 1995), 60 FR 3886 (January 19, 1995); 36102 (August 14, 1995), 60 FR 43626 (August 22, 1995); 36226 (September 13, 1995), 60 FR 49029 (September 21, 1995); 36368 (October 13, 1995), 60 FR 54091 (October 19, 1995); 36481 (November 13, 1995), 60 FR 58119 (November 24, 1995) ("November 1995 Extension Order"); 36589 (December 13, 1995), 60 FR 65696 (December 20, 1995); 36650 (December 28, 1995), 61 FR 358 (January 4, 1996); 36934 (March 6, 1996), 61 FR 10408 (March 13, 1996); 36985 (March 18, 1996), 61 FR 12122 (March 25, 1996); 37689 (September 16, 1996), 61 FR 50058 (September 24, 1996); 37772 (October 1, 1996), 61 FR 52980 (October 9, 1996); 38457 (March 31, 1997), 62 FR 16880 (April 8, 1997); 38794 (June 30, 1997) 62 FR 36586 (July 8, 1997); 39505 (December 31, 1997) 63 FR 1515 (January 9, 1998); 40151 (July 1, 1998) 63 FR 36979 (July 8, 1998); 40896 (December 31, 1998), 64 FR 1834 (January 12, 1999); 41392 (May 12, 1999), 64 FR 27839 (May 21, 1999) ("May 1999 Approval Order"); 42268 (December 23, 1999), 65 FR 1202 (January 6, 2000); 43005 (June 30, 2000), 65 FR 42411 (July 10, 2000); 44099 (March 23, 2001), 66 FR 17457 (March 30, 2001); 44348 (May 24, 2001), 66 FR 29610 (May 31, 2001); 44552 (July 13, 2001), 66 FR 37712 (July 19, 2001); 44694 (August 14, 2001), 66 FR 43598 (August 20, 2001); 44804 (September 17, 2001), 66 FR 48299 (September 19, 2001); 45081 (November 19, 2001), 66 FR 59273 (November 27, 2001); 44937 (October 15, 2001), 66 FR 53271 (October 19, 2001); 46139 (June 28, 2001), 67 FR 44888 (July 5, 2002); 46381 (August 19, 2002), 67 FR 54687 (August 23, 2002); 46729 (October 25, 2002), 67 FR 66685 (November 1, 2002); 48318 (August 12, 2003), 68 FR 49534 (August 18, 2003); and 48882 (December 4, 2003), 68 FR 69731 (December 15, 2003).

[9] See Securities Exchange Act Release Nos. 46139 (June 28, 2001[sic]), 67 FR 44888 (July 5, 2002) (putting into effect summarily Category 2 of Amendment 13 on a temporary basis not to exceed 120 days); and 46381 (August 19, 2002), 67 FR 54687 (August 23, 2002) (approving the extension of the Plan through August 19, 2003); and 46729 (October 25, 2002), 67 FR 66685 (November 1, 2002) (approving the amendments in Categories 2, 3 and 4 on a pilot basis through August 19, 2003, to be coterminous with the expiration of the Plan and continuing the exemption under Rule 11Aa3–2(f) under the Act, 17 CFR 240.11Aa3–2(f), from compliance with Section VI.C.1 of the Plan as required by Rule 11Aa3–2(d) under the Act, 17 CFR 240.11Aa3–2(d), see Securities Exchange Act Release No. 46139). See also Securities Exchange Act Release No. 48882 (December 4, 2003), 68 FR 69731 (December 15, 2003) (extending the Plan through December 15, 2004).

[10] See Securities Exchange Act Release No. 46139 (June 28, 2001), 67 FR 44888 (July 5, 2002).

[11] In Amendment 13A, the Plan section number for "Quotation Information" is erroneously listed as III.R. This error was based on an anticipated renumbering of Section III, which would occur when Item 6 of the Category 1 changes in Amendment 13 is approved.

[12] The Commission approved Nasdaq's Order Display Facility, Order Collector Facility, and Trading Platform (collectively, "SuperMontage") contingent upon the NASD offering a quote and trade reporting alternative thereto, subsequently named the Alternative Display Facility ("ADF"). See Securities Exchange Act Release No. 43863 (January 19, 2001), 66 FR 8020 (January 26, 2001) ("SuperMontage Order").

[13] NQDS had previously been defined in Section III.O. of the Plan as "the Nasdaq Quotation Dissemination Service, a data stream of information that provides Vendors and Subscribers with quotations and sizes from all Participants and Nasdaq market participants." The definition in Section III.O. and related references to NQDS in the Plan were proposed to be eliminated through Item 7 of the Category 1 amendments. NQDS would be redefined in proposed Section III.Z., therefore, the conflicting reference contained in Section III.O. would be deleted. In addition, Item 7 of the pending Amendment 13, Category 1 revisions would be revised to reference Section III.Z. instead of Section III.O.

[14] The definition of "NASD Participant" in Section III.G. originally would have been added through Item 4 of the Category 1 amendments. However, because the term is necessary to distinguish between the NASD ADF and Nasdaq market participants (and is already used in various provisions of the Plan), this definition is included as part of Amendment 13. As a result, Item 4 of the Category 1 amendments would be removed from the list of pending Amendment 13 changes. In addition, because the NASD ADF and Nasdaq are now operating under two distinct marketplace identifiers (D and Q, respectively), Section VIII.C. of the Plan would be amended to reflect this. As a result, Item 10 of the Category 1 amendments would be removed from the list of the pending Amendment 13 changes.

renumbered to Sections III.H through III.Y.

3. Section VI.B. and VI.C.3. of the Plan would be amended to clarify who will act as the Processor for NQDS given the timing of Nasdaq's exchange registration and the appointment of an independent processor. Specifically, so long as Nasdaq is not registered as a national securities exchange but is still the Plan's Processor, these revisions would clarify that the Processor shall collect, consolidate, disseminate, and distribute the quotation information contained in NQDS. The revisions would also provide that, in the event a new Processor is selected for the Plan's other data feeds while Nasdaq's exchange registration is still pending, the Operating Committee would need to determine whether to allow Nasdaq or a third party to act as the Processor for NQDS.

4. Finally, Amendment 13A would amend Plan Exhibit 1, which governs the distribution of revenue attributable to the sale of market data collected pursuant to the Plan. Paragraph 3 of Plan Exhibit 1 would be amended to clarify that NQDS continues to be one of the data feeds subject to Paragraph 3. It also would be amended to reflect the change in the name of the "Level 1 Service" to the "UTP Quote Data Feed" (Section III.I) and the "Nasdaq Last Sale Information Service" to "UTP Trade Data Feed" (Section M), as well as reflect the addition of the OTC Montage Data Feed (Section III.O).[15]

III. Discussion and Commission's Findings

After careful consideration of proposed Amendment 13A to the Plan, the Commission finds that approving Amendment 13A is consistent with the requirements of the Act and the rules and regulations thereunder, and, in particular, Section 11A(a)(1)[16] of the Act and Rules 11Aa3–1 and 11Aa3–2(c)(2) thereunder.[17] Section 11A of the Act directs the Commission to facilitate the development of a national market system for securities, "having due regard for the public interest, the protection of investors, and the maintenance of fair and orderly markets," and cites as an objective of that system the "fair competition * * * between exchange markets and markets other than exchange markets."[18] Rule 11Aa3–2(c)(2) requires the Commission to approve a plan or amendment "if it finds that such plan or amendment is necessary or appropriate in the public interest, for the protection of investors, and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act."[19] The Commission finds that approving Amendment 13A is appropriate in the public interest and otherwise in furtherance of the purposes of the Act. The amendment makes changes to the Plan related to the elimination of the Legacy SIP, which will enhance the maintenance of fair and orderly markets, and remove impediments to, and perfect the mechanisms of, a national market system.

IV. Conclusion

It is therefore ordered, pursuant to Section 11A of the Act[20] and paragraph (c)(2) of Rule 11Aa3–2[21] thereunder, that Amendment 13A to the Plan be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–11518 Filed 5–20–04; 8:45 am]

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[15] The change in definition of the UTP Quote, UTP Trade and OTC Montage Data Feeds was approved as part of the Category 2 amendments, but the cross-references in Paragraph 3 of Plan Exhibit 1 were not revised at that time (the cross-references were instead listed as part of Item 15 of the Category 1 changes). In drafting the Amendment 13A resolution, the Operating Committee assumed these changes were effective. The Processor continued to disseminate the Level 1, Level 2 and Nasdaq Last Sale Information Service for a parallel period to enable market data vendors to have a smooth transition to the new feeds. To the extent there is Plan revenue attributable to the parallel operation of these feeds, that revenue is governed by Paragraph 3 as though those terms had not been deleted.

[16] 15 U.S.C. 78k–1(a)(1).

[17] 17 CFR 240.11Aa3–1 and 17 CFR 240.11Aa3–2(c)(2).

[18] 15 U.S.C. 78k–1(a).

[19] 17 CFR 240.11Aa3–2(c)(2).

[20] 15 U.S.C. 78k–1.

[21] 17 CFR 240.11Aa3–2(c)(2).

[22] 17 CFR 200.30–3(a)(27).

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 meetings during the week of May 24, 2004:

Closed Meetings will be held on Tuesday, May 25, 2004, at 11 a.m., Wednesday, May 26, 2004, at 12 p.m., and Thursday, May 27, 2004, at 2 p.m.

An Open Meeting will be held on Wednesday, May 26, 2004, at 10 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9), and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii), and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Campos, as duty officer, voted to consider the items listed for the closed meetings in closed sessions.

The subject matter of the Closed Meeting scheduled for Tuesday, May 25, 2004 will be:

Formal order of investigation;

Institution and settlement of injunctive actions; and

Institution and settlement of administrative proceedings of an enforcement nature.

The subject matter of the Open Meeting scheduled for Wednesday, May 26, 2004 will be:

1. The Commission will consider whether to adopt amendments to Form N–1A under the Securities Act of 1933 and the Investment Company Act of 1940 that would require an open-end management investment company to provide enhanced prospectus disclosure regarding breakpoint discounts on front-end sales loads.

For further information, please contact Christian L. Broadbent at (202) 942–0721.

2. The Commission will consider whether to adopt new rule 204A–1 under the Investment Advisers Act of 1940 ("Advisers Act"). The rule would require investment advisers to adopt codes of ethics that would set forth standards of conduct for advisory personnel and address conflicts that arise from personal trading by advisory personnel. The Commission will also consider whether to adopt related amendments to Advisers Act rule 204–2, Advisers Act Form ADV, and rule 17j–1 under the Investment Company Act of 1940.

For further information, please contact Robert Tuleya at (202) 942–0719.

3. The Commission will consider whether to propose a new rule under Section 17A of the Securities Exchange Act of 1934 ("Exchange Act") that would prohibit registered transfer agents from effecting any transfer of an equity

securities registered under Section 12 or 15(d) of the Exchange Act where transfer of such security to or from securities intermediaries is restricted or prohibited. The term "securities intermediary" would be defined in the rule as a clearing agency registered under Section 17A of the Exchange Act or a person, including a bank, broker, or dealer, that in the ordinary course of its business maintains securities accounts for others. For purposes of the proposed rule, the term "equity securities" excludes securities issued by partnerships, as defined in § 229.901(b) of Regulation S–K, as well as any other equity security the Commission may exempt.

For further information, please contact Jerry Carpenter or Susan Petersen, at (202) 942–4187.

4. The Commission will hear oral argument on appeals by Clarke T. Blizzard and the Division of Enforcement from the decision of an administrative law judge. Blizzard was formerly a senior vice president and managing director of Shawmut Investment Advisers, Inc. ("Shawmut"). Rudolph Abel, formerly Shawmut's president and chief investment officer, opposes the Division's petition for review.

The law judge found that Blizzard willfully aided and abetted and caused violations of Section 206(1) and 206(2) of the Investment Advisers Act of 1940 by Shawmut. The law judge found that charges that Abel aided and abetted violations of those provisions were unproven because no primary violations by Shawmut were established during the period that Abel was employed at Shawmut. The law judge ordered Blizzard to cease and desist from committing or causing any violations or future violations of Section 206 of the Advisers Act; to disgorge commissions in the amount of $548,233, plus pre-judgment interest; to pay a civil money penalty of $100,000; and to be suspended for 90 days from association with an investment adviser.

Among the issues likely to be argued are:

1. Whether Shawmut committed the alleged primary violation on which aiding and abetting liability by Blizzard and Abel may be premised.

2. Whether Blizzard and Abel committed the alleged aiding-and-abetting violations.

3. If respondents committed violations, whether sanctions should be imposed in the public interest.

The subject matter of the Closed Meeting scheduled for Wednesday, May 26, 2004, will be:

Post-argument discussion.

The subject matter of the Closed Meeting scheduled for Thursday, May 27, 2004, will be:

Formal order of investigation;

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature; and an adjudicatory matter.

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: May 18, 2004.

Jonathan G. Katz,

Secretary.

[FR Doc. 04–11655 Filed 5–19–04; 12:18 pm]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49716; File No. SR–NASD–2003–164]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 by the National Association of Securities Dealers, Inc. Relating to the Adjournment of an Arbitration Hearing Within Three Business Days of the First Scheduled Hearing Session

May 17, 2004.

On November 4, 2003, the National Association of Securities Dealers, Inc. ("NASD" or "Association") through its wholly owned subsidiary, NASD Dispute Resolution, Inc. ("NASD Dispute Resolution"), filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4[2] thereunder, a proposal to amend the rules relating to the adjournment of a scheduled arbitration hearing. On March 5, 2004, NASD filed Amendment No. 1 to the proposed rule change.[3] On April 1, 2004, NASD filed Amendment No. 2 to the proposed rule change.[4] Notice of the proposed rule change, as amended, was published for comment in the **Federal Register** on April 14, 2004.[5] No comments were received on the proposed rule change. This order approves the proposed rule change.

The proposed rule change will amend NASD IM–10104, Rule 10306, and Rule 10319 of the Code to impose a fee of $100 per arbitrator on parties and to compensate arbitrators in the event a hearing is adjourned within three business days before a scheduled hearing session.

The Commission believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities association.[6] Specifically, the Commission finds that the proposal is consistent with Section 15A(b)(6) of the Act,[7] which requires, among other things, that NASD's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

The Commission believes the proposed rule change will provide NASD Dispute Resolution with an effective means of addressing the problems associated with last minute adjournments. The rule change should discourage frivolous adjournment requests while promoting more efficient use of the arbitration process by encouraging parties, when appropriate, to settle their disputes earlier to avoid additional fees. In addition, the Commission believes the proposed rule change should help NASD Dispute Resolution maintain a deep pool of qualified arbitrators by assuring arbitrators of some compensation in the event a scheduled hearing is adjourned at the last minute. In sum, the Commission believes that, by providing a more efficient and effective forum for investors to address grievances involving NASD members, the proposed rule change will serve to protect investors and the public interest.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (File No. SR–NASD–2003–164) be, and it hereby is, approved.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter dated March 5, 2004 from Mignon McLemore, Counsel, NASD Dispute Resolution, to Katherine England, Assistant Director, Division of Market Regulation.

[4] *See* letter dated April 1, 2004 from Mignon McLemore, Counsel, NASD Dispute Resolution, to Katherine England, Assistant Director, Division of Market Regulation.

[5] *See* Securities Exchange Act Release No. 49545 (April 8, 2004), 69 FR 19887 (April 14, 2004).

[6] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78*o*–3(b)(6).

[8] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–11519 Filed 5–20–04; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #P033]

State of Arkansas

As a result of the President's major disaster declaration for Public Assistance on May 7, 2004, the U.S. Small Business Administration is activating its disaster loan program only for private non-profit organizations that provide essential services of a governmental nature. I find that Baxter, Boone, Carroll, Franklin, Jackson, Johnson, Madison, Marion, Newton, Searcy, Stone, Washington, and Woodruff Counties in the State of Arkansas constitute a disaster area due to damages caused by severe storms, flooding and landslides occurring on April 19, 2004, and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on July 6, 2004, at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 3 Office, 14925 Kingsport Road, Ft. Worth, TX 76155–2243.

The interest rates are:

	Percent
For Physical Damage:	
NON-PROFIT ORGANIZATIONS WITHOUT CREDIT AVAILABLE ELSEWHERE	2.750
NON-PROFIT ORGANIZATIONS WITH CREDIT AVAILABLE ELSEWHERE	4.875

The number assigned to this disaster for physical damage is P03311.

(Catalog of Federal Domestic Assistance Program Nos. 59008).

Dated: May 17, 2004.

Allan I. Hoberman,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 04–11578 Filed 5–20–04; 8:45 am]

BILLING CODE 8025–01–P

[9] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Modification of Single Car Air Brake Test Procedures

In accordance with Part 232 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for modification of the single car air brake test procedures as prescribed in § 232.305(a). The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's argument in favor of relief.

The Association of American Railroads

[Docket Number FRA–2004–17566]

Pursuant to 49 CFR 232.307, the Association of American Railroads (AAR) seeks modification of the single car air brake test procedures, S–486, as prescribed in § 232.305(a) of the Brake System Safety Standards for Freight and Other Non-Passenger Trains and Equipment. Specifically, AAR intends to remove all references to the flowrator method of testing brake cylinder leakage, and only permit the use of the gauge. The Sections, Paragraphs and Parts of S–486 that AAR request to be modified are as follows:

Original—3.1.2.6 Check the control valve pipe bracket, associated brake cylinder piping, and empty/load device for male brake cylinder pressure taps. If so equipped, apply a quick-disconnect coupling with a brake cylinder pressure test gauge.

Modification—3.1.2.6 Apply a brake cylinder pressure test gauge to the brake cylinder pressure tap.

Paragraphs 3.1.2.7 and 3.1.2.8 The contents of these two paragraphs are being eliminated.

Original—3.1.2.7 If the car being tested has certain wheel defects, a brake cylinder pressure tap must be installed. See the Field Manual of the AAR Interchange Rules, Rule 3, Chart A, for these defects. After the tap is installed, apply a cylinder test gauge. **Note:** If the car has the wheel defects shown in the Field Manual of the AAR Interchange Rules, Rule 3, Chart A, and has a pipe plug in the brake cylinder pipe, remove the plug and install an AAR-approved brake cylinder pressure measurement tap. If the car is equipped with an empty/load valve and the pipe plug is located upstream of the empty/load, install the brake cylinder pressure tap downstream of the empty/load valve. After the tap is installed, apply a cylinder test gauge.

Original—3.1.2.8 The preferred location of the male pressure tap is within a 2-ft radius around the exterior surfaces of the pipe bracket for single-capacity brake systems. For brake systems equipped with empty/load valves, the preferred location is within a 2-ft radius of the exterior surfaces of the empty/load valve, and the pressure tap must be located in the pipe from the empty/load valve(s) to the brake cylinder(s). The pressure tap may be located at the side sill of the car near the control valve or the empty/load valve if so equipped. See the AAR Manual of Standards and Recommended Practices, Standard S–4020, for a more detailed description of recommended pressure tap locations.

Paragraph 3.1.2.9 is being modified and renumbered as 3.1.2.7

Original—3.1.2.9 If the car is equipped with an empty/load device, the device must be set to the loaded position. For side frame sensing devices, place a block (2-in. minimum thickness) under the sensing arm. For slope sheet sensing devices, insert a pin (supplied by Ellcon-National) or push in a plunger (WABTEC). **Note:** For cars equipped with empty/load devices, all test procedures must be performed in the loaded condition. Cars with empty/load devices that automatically reset to the empty position must be manually reset to the loaded condition for each of the tests defined here.

Modification—3.1.2.7 If the car is equipped with an empty/load device, the device must be set to the loaded position. For side frame sensing devices, place a block (2-in. minimum thickness) under the sensing arm. For slope sheet sensing devices, insert a pin (supplied by Ellcon-National) or push in a plunger (WABTEC). **Note:** For cars equipped with empty/load devices, all test procedures must be performed in the loaded position. Cars with empty/load devices that automatically reset to the empty position must be manually reset to the loaded position for each of the tests defined here.

Original—3.5.1 With the control valve cut in, move the test device handle to position 1 and charge the system to 90 psi. Close the flowrator by-pass cock to determine if excessive leakage exists. Allow the ball to stabilize at its lowest reading. When the ball stabilizes at a point between the condemning line and the bottom of the tube, note the location of the top of the flowrator ball. Open the flowrator by-pass cock.

Modification—3.5.1 With the control valve cut in, move the test

device handle to position 1 and charge the system to 90 psi. Close the flowrator by-pass cock to determine if excessive leakage exists. Allow the ball to stabilize at its lowest reading. The ball must stabilize between the condemning line and the bottom of the tube. Open the flowrator by-pass cock. Original—3.6.1 Lubricate the hand brake winding shaft and oil cups, if so equipped, with a good grade of 30W oil. With the hand brake in released position, note that the brake cylinder piston push rod(s) have returned into the brake cylinder(s). Apply the hand brake. Observe that bell crank, if so equipped, is in normal working range. Using a bar, determine that all shoes applied by the hand brake are firmly set against the wheels to verify that associated linkage does not bind or foul. On cars with WABCOPAC/NYCOPAC type truck mounted brakes and a hand brake that operates the brake beams on one or both trucks, a minimum of one shoe on each beam must be firmly set against the wheel to verify that associated linkage does not bind or foul. Release hand brake using operating wheel and/or lever. Note that drum chain is fully unwound, that bell crank, if so equipped, drops to lower limit, and that there is minimal slack in the horizontal chain.

Modification—3.6.1 Lubricate the hand brake winding shaft and oil cups, if so equipped, with a good grade of 30W oil. With the hand brake in released position, note that the brake cylinder piston push rod(s) have returned into the brake cylinder(s). Apply the hand brake. Observe that bell crank, if so equipped, is in normal working range. Using a bar, determine that all shoes applied by the hand brake are firmly set against the wheels to verify that associated linkage does not bind or foul. On cars with WABCOPAC/NYCOPAC type truck mounted brakes and a hand brake that operates the brake beams on one or both trucks, a minimum of one shoe on each beam must be firmly set against the wheel to verify that associated linkage does not bind or foul. Release hand brake using operating wheel and/or lever. Note that drum chain is fully unwound, that bell crank, if so equipped, drops to lower limit, and that there is minimal slack in the horizontal chain. New or reconditioned hand brakes do not require lubrication at the time of application. Handbrakes requiring lubrication shall be in accordance with MSRP section H3.

Paragraph 3.7.6 is being eliminated.

Original—3.7.6 If the car is equipped with a bleed/stabilizing type vent valve, ensure that the bleed valve is reset (stem in, no air exhausting).

Paragraph 3.7.7 is being modified and renumbered as 3.7.6.

Original—3.7.7 If the brake cylinder gauge was installed as described in paragraph 3.1.2.6 or paragraph 3.1.2.7, soap the male pressure tap and coupling. No leakage is allowed. Note the brake cylinder pressure after the brake pipe pressure has stabilized for later comparison with paragraph 3.9.1, emergency tests, and paragraph 3.16.4.2, empty/load test.

Modification—3.7.6 Soap the male pressure tap and coupling. No leakage is allowed. Note the brake cylinder pressure after the brake pipe pressure has stabilized for later comparison with paragraph 3.9.1, emergency tests, and paragraph 3.16.4.2, empty/load test.

Paragraph 3.7.8—is being renumbered as 3.7.7. There will no longer be a Section 3.7.8.

Modification 3.12.1—A third probable cause is being added.

3. Excessive brake cylinder leakage can cause the brake pipe to continue reducing.

Paragraphs 3.12.3 and 3.12.3.1 are being eliminated.

Original—3.12.3 If a brake cylinder pressure gauge was installed, go to paragraph 3.12.3.2.

Original—3.12.3.1 Brake Cylinder Leakage Test—Flowrator Method

Use the flowrator method if a brake cylinder pressure gauge is not used. After the pressure has stabilized at 80 psi, wait 1 minute, close the flowrator by-pass cock, and observe the flowrator until the ball stabilizes. If the airflow causes the top of the flowrator ball to rise two lines or more over the ball position noted previously in the system leakage test (paragraph 3.5.1), inspect the brake cylinder and associated piping for leakage. Repair any leakage found and repeat the test. If no external brake cylinder or associated piping leakage is detected, the probable cause is a defective service portion. If any exhaust of air is detected at the emergency portion vent valve or at a separate quick-service valve, then that particular valve portion is defective. At the completion of this test, open the flowrator by-pass cock. Proceed to paragraph 3.13. **Note:** In addition to brake cylinder leakage, this test checks for leakage of brake pipe pressure to the brake cylinder when the control valve is in service lap position. This type of defect results in abnormally high brake cylinder pressure. However, emergency reservoir pressure leaking to the brake cylinder or to the auxiliary reservoir has the same effect, but is undetectable with this test.

Paragraph 3.12.3.2 is being modified and renumbered as 3.12.3.

Original—3.12.3.2 Brake Cylinder Leakage Test—Gauge Method

Use the brake cylinder gauge method if a brake cylinder pressure gauge was installed as described in paragraph 3.1.2.6 or paragraph 3.1.2.7. After the brake pipe pressure has stabilized at 80 psi, wait 3 minutes and then note the pressure on the brake cylinder gauge. Wait another 1 minute and then recheck the brake cylinder gauge. No more than a 1-psi increase or decrease in brake cylinder pressure is allowed. If brake cylinder pressure decreases, the probable cause is a leak in the brake cylinder or its associated piping. If brake cylinder pressure increases, the probable cause is either a defective service portion or a defective emergency portion. **Note:** To determine which portion may be defective, move the device handle to position 5, increase the brake application to a 30-psi reduction, and then return the device handle to position 3. After the brake pipe pressure has stabilized, wait 2 minutes and then note the brake cylinder gauge. Wait another 1 minute and then recheck the brake cylinder gauge. If the brake cylinder pressure has increased, the emergency portion is defective or an internal leak exists in the reservoir separation plate between the auxiliary and emergency reservoirs. If the brake cylinder pressure did not increase, then the service portion is defective.

Modification 3.12.3 Brake Cylinder Leakage Test

After the brake pipe pressure has stabilized at 80 psi, wait 3 minutes and then note the pressure on the brake cylinder gauge. Wait another 1 minute and then recheck the brake cylinder gauge. No more than a 1-psi increase or decrease in brake cylinder pressure is allowed. If brake cylinder pressure decreases, the probable cause is a leak in the brake cylinder or its associated piping. If brake cylinder pressure increases, the probable cause is either a defective service portion or a defective emergency portion. **Note:** To determine which portion may be defective, move the device handle to position 5, increase the brake application to a 30-psi reduction, and then return the device handle to position 3. After the brake pipe pressure has stabilized, wait 2 minutes and then note the brake cylinder gauge. Wait another 1 minute and then recheck the brake cylinder gauge. If the brake cylinder pressure has increased, the emergency portion is defective or an internal leak exists in the reservoir separation plate between the auxiliary and emergency reservoirs. If the brake cylinder pressure did not increase, then the service portion is defective.

Original—3.16.3 Completing the Test on a Loaded Car

Note: If a car is empty and equipped with an Empty/Load, go to paragraph 3.16.4 or on a car not equipped with a brake cylinder test gauge.

Modification—3.16.3 Completing the Test on a Loaded Car or an Empty Car without Empty/Load.

Note: If a car is empty and equipped with an Empty/Load, go to paragraph 3.16.4.

Original—3.16.4 Completing Test on an empty car equipped with empty/load and a brake cylinder test gauge.

Note: If car has defective slack adjuster, change slack adjuster and test according to Sect 4.1, and then continue test with section 3.16.4.1.

Modification—3.16.4 Completing Test on an empty car equipped with empty/load

Note: If car has defective slack adjuster, change slack adjuster and test according to Sect 4.1, and then continue test with section 3.16.4.1.

Original—3.16.5 If brake cylinder gauge was installed in 3.1.2.6, make certain that gauge is removed at this time. Soap male brake cylinder pressure tap. No leakage is allowed. If leakage is present, drain brake cylinder, release brake and replace the brake cylinder pressure tap per section 4.4.

Modification—3.16.5 Make certain that the brake cylinder pressure gauge is removed at this time. Soap male brake cylinder pressure tap. No leakage is allowed. If leakage is present, drain brake cylinder, release brake and replace the brake cylinder pressure tap per section 4.4.

Paragraphs 3.17.2 through 3.17.5 The contents of these paragraphs have not changed. Paragraph 3.17.2 was divided into two paragraphs, therefore causing the other paragraphs to be renumbered.

Modification—3.17.2 To prevent possible overcharge problems, drain car reservoirs.

Modification—3.17.3 If empty/load device on an empty car was set to loaded position and was not set to empty position in section 3.16.2, return setting to empty position.

Modification—3.17.4 Shut off air supply to test device, or place device handle in Position 3.

Modification—3.17.5 Open ⅜-inch cock, and disconnect test device. Remove dummy coupling.

Modification—3.17.6 If required, secure the car to prevent movement.

Original—4.5 Brake Cylinder Leakage Test Using Gauge

Note: If the car is equipped with an empty/load device, the car must be set to the LOADED position. If the car is equipped with a brake cylinder pressure tap, install a brake cylinder pressure gauge. If the car does not have a tap, go to section 4.2, Retaining Valve Test.

Modification—4.5 Brake Cylinder Leakage Test

Note: If the car is equipped with an empty/load device, the car must be set to the loaded position. Install a brake cylinder pressure gauge.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Docket Number FRA–2004–17566) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Comments received within 60 days of the date of this notice will be considered by FRA before final action is taken. Pursuant to § 232.307(d), if no comment objecting to the requested modification is received during the 60-day comment period, or if FRA does not issue a written objection to the requested modification, the modification will become effective 15 days after the close of the 60-day comment period. 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 May 17, 2004.

Grady C. Cothen, Jr.,

Acting Associate Administrator for Safety.

[FR Doc. 04–11591 Filed 5–20–04; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Northeast Illinois Regional Commuter Railroad Corporation (Metra)

[Waiver Petition Docket Number FRA–2003–16891]

The Northeast Illinois Regional Commuter Railroad Corporation (Metra) seeks a waiver of compliance from certain provisions of the Railroad Operating Practices, 49 CFR Part 218. Specifically, Metra requests relief from the requirements of 49 CFR 218.25, Workers on a Main Track, at Amtrak's Chicago Union Station.

Metra operates passenger trains out of the north side of the Chicago Union Station, which were formally operated by the Milwaukee Road. In the past, Metra conducted its operations under the conditions of waiver RSOR 82–1, which had been previously granted to the Milwaukee Road on May 24, 1982. This waiver provided relief from the requirements of § 218.27(c) and (e) at the Chicago Union Station on tracks 1–3–5–7–9–11 and 13, for the Chicago, Milwaukee, St Paul and Pacific Railroad Company. That waiver prevented enginemen from coupling to equipment until a carman had assured the engineer that the 480-volt standby cable had been disconnected.

It allowed carmen to plug and unplug the 480-volt standby cable to the equipment after the engine has been coupled to the equipment. It required a yellow light to be displayed from the north end marker bracket on the last car of the train, platform side, prior to connecting the standby cable. An engineman was prohibited from restoring AC power to the train from the head end, until the yellow light was removed. The reason the Milwaukee Road requested the relief was to avoid filling the area under Union Station with diesel fumes. They stated that the time it would take to establish and/or remove blue signal protection was too long.

In early December 2003, Amtrak changed the status of the aforementioned station tracks from other than main track to main track, thereby voiding the provisions of the original waiver. Blue signal protection is now shifted from § 218.27, Workers on Other Than Main Track, to § 218.25, Workers on Main Track.

Metra is requesting FRA to consider allowing the provisions of the old Milwaukee Road waiver to be expanded to include the provisions of § 218.25 for all stub-ended tracks at Chicago Union Station. This will permit the railroad to connect and disconnect standby power to the cab car or locomotive end of the train(s) which are at or near the bumping post of the former "other than main track," when they are in the same position on the new stub ended tracks.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number FRA–2003–16891) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received within 30 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. 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 May 17, 2004.

Grady C. Cothen, Jr.,

Acting Associate Administrator for Safety.

[FR Doc. 04–11590 Filed 5–20–04; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA–2094–17894]

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Transit Administration, DOT.

ACTION: Request for emergency approval process.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) to request an emergency approval process. FTA requested approval of this ICR by 30 days from the date of publication of this notice.

DATES: Comments must be submitted before June 21, 2004.

FOR FURTHER INFORMATION CONTACT: Sylvia L. Marion, Office of Administration, Office of Management Planning, (202) 366–6680.

SUPPLEMENTARY INFORMATION:

Title: United We Ride State Coordination Grants.

Type of Request: Emergency Approval Request.

OMB Control Number: 2132-New.

Form(s): N/A.

Affected Public: State agencies.

Abstract: FTA provides financial assistance to states, local governments, private nonprofit agencies, and public bodies through 49 U.S.C. 5314 for transportation services designed to meet the needs of elderly persons and persons with disabilities. The General Accounting Office (GAO) issued two reports on Transportation for Disadvantaged Populations (June 2003 and February 2004). In these reports, GAO identified 62 federal programs that support transportation services for individuals with disabilities, older adults and persons with lower incomes. GAO also identified a significant number of obstacles and barriers to coordinating services.

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.

Estimated Total Annual Burden: 500 hours.

ADDRESSES: All written comments must refer to the docket number that appears at the top of this document and be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention: FTA Desk Officer.

Comments are Invited On: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Dated: May 18, 2004.

Ann M. Linnertz,

Deputy Associate Administrator for Administration.

[FR Doc. 04–11593 Filed 5–20–04; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

International Standards on the Transport of Dangerous Goods; Public Meetings

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation.

ACTION: Notice of public meetings.

SUMMARY: This notice is to advise interested persons that RSPA will conduct public meetings in preparation for and to report the results of the 25th session of the United Nation's Sub-Committee of Experts on the Transport of Dangerous Goods (UNSCOE) to be held July 5–14, 2004 in Geneva, Switzerland.

DATES: June 23, 2004, 9:30 a.m.–12:30 p.m., Room 3328. July 21, 2004, 9:30 a.m.–12:30 p.m., Room 3200–3202.

ADDRESSES: Both meetings will be held at DOT Headquarters, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Bob Richard, International Standards Coordinator, or Mr. Duane Pfund, Assistant International Standards Coordinator, Office of Hazardous Materials Safety, Department of Transportation, Washington, DC 20590; (202) 366–0656.

SUPPLEMENTARY INFORMATION: The primary purpose of the first meeting will be to prepare for the 25th session of the UNSCOE and to discuss draft U.S. positions on UNSCOE proposals. The primary purpose of the second meeting will be to provide a briefing on the outcome of the UNSCOE session and to prepare for the 26th session of the UNSCOE. Topics to be covered during the public meetings include: (1) Harmonization of the Recommendations on the Transport of Dangerous Goods with the Globally Harmonized System of Classification and Labeling of Chemicals, (2) Hazards to the aquatic environment (3) Procedures for incident reporting, (4) Evaluation of the United Nations packaging requirements, (5) Transport of Dangerous Goods in limited quantities and consumer commodities, (6) Miscellaneous proposals related to listing and classification and the use of packagings and tanks. The public is invited to attend without prior notification. Due to the heightened security measures participants are encouraged to arrive early to allow time for security checks necessary to obtain access to the building.

Documents

Copies of documents for the UNSCOE meeting and the meeting agenda may be obtained by downloading them from the United Nations Transport Division's Web site at: *http://www.unece.org/trans/main/dgdb/dgsubc/c32004.html*. This site may also be accessed through RSPA's Hazardous Materials Safety Homepage at *http;//hazmat.dot.gov/intstandards.htm*. RSPA's site provides additional information regarding the UNSCOE and related matters such as a summary of decisions taken at previous sessions of the UNSCOE.

Issued in Washington, DC, on May 17, 2004.

Frits Wybenga,

Deputy Associate Administrator for Hazardous Materials Safety.

[FR Doc. 04–11594 Filed 5–20–04; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–6 (Sub–No. 414X)]

The Burlington Northern and Santa Fe Railway Company—Abandonment Exemption—in Modoc and Siskiyou Counties, CA

The Burlington Northern and Santa Fe Railway Company (BNSF) has filed a notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon and discontinue service over a 33.77-mile line of railroad between milepost 0.00 near Lookout, and milepost 33.77 near Hambone, in Modoc and Siskiyou Counties, CA. The line traverses United States Postal Service Zip Codes 96054 and 96056.

BNSF has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic to be rerouted; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment and discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on June 22, 2004, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by June 1, 2004. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by June 10, 2004, with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to BNSF's representative: Michael Smith, Freeborn & Peters, 311 S. Wacker Dr., Suite 3000, Chicago, IL 60606–6677.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

BNSF has filed an environmental report which addresses the effects, if any, of the abandonment and discontinuance on the environment and historic resources. SEA will issue an environmental assessment (EA) by May 28, 2004. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1539. (Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.) Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), BNSF shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned its line. If consummation has not been effected by BNSF's filing of a notice of consummation by May 21, 2005, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *www.stb.dot.gov*.

Decided: May 12, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–11212 Filed 5–20–04; 8:45 am]

BILLING CODE 4915–01–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

[3] Each trail use request must be accompanied by the filing fee, which is set at $200.00. *See* 49 CFR 1002.2(f)(27).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–6 (Sub–No. 415X)]

The Burlington Northern and Santa Fe Railway Company—Abandonment Exemption—in Cavalier County, ND

The Burlington Northern and Santa Fe Railway Company (BNSF) has filed a notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon a 20.93-mile line of railroad between BNSF milepost 74.07 near Langdon and milepost 95.00 near Hannah, in Cavalier County, ND. The line traverses United States Postal Service Zip Codes 58249, 58281 and 58239.

BNSF has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) all overhead traffic can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on June 22, 2004, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by May 28, 2004. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by June 10, 2004, with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to BNSF's representative: Michael Smith, Freeborn & Peters, 311 S. Wacker Dr., Suite 3000, Chicago, IL 60606–6677.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

BNSF has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by May 28, 2004. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), BNSF shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by BNSF's filing of a notice of consummation by May 21, 2005, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *www.stb.dot.gov*.

Decided: May 13, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–11429 Filed 5–20–04; 8:45 am]

BILLING CODE 4915–01–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 13, 2004.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before June 21, 2004 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1013.
Form Number: IRS Form 8612.
Type of Review: Extension.
Title: Return of Excise Tax on Undistributed Income of Real Estate Investment Trusts.
Description: Form 8612 is used by real estate investment trusts to compute and pay the excise tax on undistributed income imposed under section 4981. IRS uses the information to verify that the correct amount of tax has been reported.
Respondents: Business or other for-profit.
Estimated Number of Respondents/Recordkeeping: 20.
Estimated Burden Hours Respondent/Recordkeepers:
Recordkeeping—6 hr., 13 min.
Learning about the law or the form—1 hr., 40 min.
Preparing and sending the form to the IRS—1 hr., 52 min.
Frequency of response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 196 hours.
OMB Number: 1545–1338.
Regulation Project Number: PS–103–90 Final.
Type of Review: Extension.
Title: Election Out of Subchapter K for Producers of Natural Gas.
Description: Under section 1.761–2(d)(5)(i), gas producers subject to gas balancing agreements on the regulation's effective date are to file Form 3115 and certain additional information to obtain the Commissioner's consent to a change in method of accounting to either of the two new permissible accounting methods in the regulations.

Respondents: Business or other for-profit, individuals or households.

Estimated Number of Respondents: 10.

Estimated Burden Hours Respondent: 30 minutes.

Frequency of response: On occasion, Other (one-time only).

Estimated Total Reporting Burden: 5 hours.

Clearance Officer: Glenn P. Kirkland, (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building,Washington, DC 20503.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 04–11494 Filed 5–20–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4868

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4868, Application for Automatic Extension of Time to File U.S. Individual Income Tax Return.

DATES: Written comments should be received on or before July 20, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Mortgage Interest Credit.

OMB Number: 1545–0188.

Form Number: 4868.

Abstract: Form 4868 is used by taxpayers to apply for an automatic 4-month extension of time to file Form 1040, Form 1040A or Form 1040EZ. The form contains information used by the IRS to determine if a taxpayer qualifies for the extension.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 5,572,999.

Estimated Time Per Respondent: 1 hr., 5 min.

Estimated Total Annual Burden Hours: 6,353,219.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 17, 2004.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–11584 Filed 5–20–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8815

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8815, Exclusion of Interest From Series EE and I U.S. Savings Bonds Issued After 1989.

DATES: Written comments should be received on or before July 20, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Exclusion of Interest From Series EE and I U.S. Savings Bonds Issued After 1989.

OMB Number: 1545–1173.

Form Number: Form 8815.

Abstract: If an individual redeems series I or series EE U.S. savings bonds issued after 1989 and pays qualified higher education expenses during the year, the interest on the bonds may be excludable from income. Form 8815 is used by the individual to figure the amount of savings bond interest that is excludable.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 25,000.

Estimated Time Per Respondent: 2 hours, 2 minutes.

Estimated Total Annual Burden Hours: 51,110.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 17, 2004.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–11585 Filed 5–20–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–106177–97]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

Currently, the IRS is soliciting comments concerning an existing proposed regulation, REG–106177–97, Qualified State Tuition Programs.

DATES: Written comments should be received on or before July 20, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Qualified State Tuition Programs.

OMB Number: 1545–1614.

Regulation Project Number: REG–106177–97.

Abstract: This regulation affects qualified State tuition programs (QSTPs) established under Code section 529 and individuals receiving distributions from QSTPs. The information required by the regulation will be used by the IRS and individuals receiving QSTP distributions to verify compliance with section 529 and to determine that the taxable amount of the distribution has been computed correctly.

Current Actions: Section 529 was amended to delete section (b)(3) which provided that a program was required to impose a more that *de minimis* penalty on any refund of earnings from an account unless (1) used for qualified higher education expenses, (2) made on account of death or disability, or (3) made on account of certain scholarships or certain other allowances or payments up to the amount of the scholarship, allowance or payment, received by the designated beneficiary. This change eliminated the burden connected with the collection of the penalty.

The burden for recordkeeping with respect to transactions and separate accounts has changed because of an increase in the number of accounts. The estimated number of accounts has increased to 5,677,680.

Type of review: Revision of OMB approval.

Affected Public: State, local or tribal governments and individuals or households.

Estimated Number of Respondents/Recordkeepers: 52.

Estimated Time Per Respondent/Recordkeeper: 81,889 hrs., 37 minutes.

Estimated Total Annual Reporting/Recordkeeping Burden Hours: 4,258,260.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 17, 2004.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–11586 Filed 5–20–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0387]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine whether an applicant qualifies as a mortgagor for mortgage insurance or guaranty or as a borrower for a rehabilitation loan under the VA program.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before July 20, 2004.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *irmnkess@vba.va.gov*. Please refer to "OMB Control No. 2900–0387" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Request for Verification of Deposit, VA Form 26–8497a.

OMB Control Number: 2900–0387.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form 26–8497a is primarily used by lenders making guaranteed and insured loans to verify the applicant's deposits in banks and other savings institutions. It is also used to process direct loans, offers on acquired properties, and release from liability/substitution of entitlement cases when needed.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 13,333 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 160,000.

Dated: May 10, 2004.

By direction of the Secretary.

Loise Russell,

Director, Records Management Service.

[FR Doc. 04–11497 Filed 5–20–04; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Friday,
May 21, 2004

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Annual Notice of Findings on Resubmitted Petitions for Foreign Species; Annual Description of Progress on Listing Actions; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Annual Notice of Findings on Resubmitted Petitions for Foreign Species; Annual Description of Progress on Listing Actions

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of review.

SUMMARY: In this document, we announce our annual petition findings for foreign species, as required under section 4(b)(3)(C)(i) of the Endangered Species Act of 1972, as amended. When, in response to a petition, we find that listing a species is warranted but precluded, we must complete a new status review each year until we publish a proposed rule or make a determination that listing is not warranted. These subsequent status reviews and the accompanying 12-month findings are referred to as "resubmitted" petition findings.

Information contained in this document describes our review of the current status of 73 foreign taxa that were the subjects of warranted-but-precluded findings. Based on our review, we find that 51 species continue to warrant listing, but that their listing remains precluded by higher-priority listing actions. Seventeen species no longer warrant listing under the Endangered Species Act and, therefore, have been removed from the warranted-but-precluded list. We will promptly publish listing proposals for five of the species.

We request additional status information for these species as well as information on taxa that we should include in future updates of this list. We will consider this information in preparing listing documents and future resubmitted petition findings. This information will also help us in monitoring the status of the taxa and in conserving them.

DATES: We will accept comments on these resubmitted petition findings at any time.

ADDRESSES: Submit any comments, information, and questions by mail to the Chief, Division of Scientific Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 750, Arlington, VA 22203; or by fax to 703–358–2276; or by e-mail to *ScientificAuthority@fws.gov*. Comments and supporting information will be available for public inspection, by appointment, Monday through Friday from 8 a.m. to 4 p.m. at the above address.

FOR FURTHER INFORMATION CONTACT: Robert R. Gabel at the above address, or by telephone, 703–358–1708; fax, 703–358–2276; or e-mail, *ScientificAuthority@fws.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), provides two mechanisms for considering species for listing. First, we can identify and propose for listing those species that are endangered or threatened based on the factors contained in section 4(a)(1). We implement this through the candidate program. Candidate taxa are those taxa for which we have on file sufficient information on biological vulnerability and threats to support a proposal to list as endangered or threatened, but for which preparation and publication of a proposed rule is precluded by higher-priority listing actions. None of the species covered by this notice were assessed through the candidate program. Second, the Act allows the public to petition us to add species to the List of Endangered and Threatened Wildlife and Plants (List). Under section 4(b)(3)(A), when we receive such a petition, we must determine within 90 days, to the maximum extent practicable, whether the petition presents substantial information indicating that the petitioned action may be warranted (90-day finding). If we make a positive 90-day finding, under section 4(b)(3)(B) we must make one of three possible findings within 12 months of the receipt of the petition (12-month finding).

The first possible 12-month finding is that listing is not warranted, in which case we need not take any further action on the petition. The second possibility is that we may find that listing is warranted, in which case we must promptly publish a proposed rule to list the species. Once we publish a proposed rule for a species, section 4(b)(5) and (6) govern further procedures, regardless of whether or not we issued the proposal in response to a petition. The third possibility is that we may find that listing is warranted but precluded. Such a finding means that immediate publication of a proposed rule to list the species is precluded by higher-priority listing proposals, and that we are making expeditious progress to add and remove species from the List, as appropriate.

Pursuant to section 4(b)(3)(C)(i) of the Act, when, in response to a petition, we find that listing a species is warranted but precluded, we must make a new 12-month finding each year until we publish a proposed rule or make a determination that listing is not warranted. These subsequent 12-month findings are referred to as "resubmitted" petition findings. This notice constitutes publication of our resubmitted petition findings for all foreign species that are currently the subject of an outstanding petition.

Section 4(b)(3)(C)(iii) of the Act requires the Service to "implement a system to monitor effectively the status of all species" subject to a warranted-but-precluded 12-month finding, and to "make prompt use of the [emergency listing] authority [under section 4(b)(7)] to prevent a significant risk to the well being of any such species." The annual resubmitted petition findings for foreign species play a crucial role in the Service's monitoring of all warranted-but-precluded foreign species by seeking information regarding the status of those species. The Service reviews all new information on these species as it becomes available and identifies any species for which an emergency listing may be appropriate. If the Service determines that emergency listing is appropriate for any species, the Service will make prompt use of its authority under section 4(b)(7). We have been monitoring and will continue to monitor all warranted-but-precluded foreign species.

Previous Notices

We published earlier petition findings, status reviews, and petition finding reviews that included foreign species in the **Federal Register** on May 12, 1981 (46 FR 26464); January 20, 1984 (49 FR 2485); May 10, 1985 (50 FR 19761); January 9, 1986 (51 FR 996); July 7, 1988 (53 FR 25511); December 29, 1988 (53 FR 52747); January 6, 1989 (54 FR 554); November 21, 1991 (56 FR 58664); March 28, 1994 (59 FR 14496); and reiterated on January 12, 1995 (60 FR 2899).

Findings on Resubmitted Petitions

This notice describes our resubmitted petition findings for 73 foreign taxa for which we had previously found listing to be warranted but precluded. We have considered any new information obtained since the previous finding, including information provided in a 1997 petition. On May 21, 1997, Public Employees for Environmental Responsibility (also known as PEER) submitted a petition to list the following species as threatened or endangered

under the Act (1996 IUCN designations shown in parentheses): Kalinowski's tinamou (*Nothoprocta kalinowskii*) (Critically Endangered), Colombian grebe (*Podiceps andinus*) (Extinct), Junin flightless grebe (*Podiceps taczanowskii*) (Critically Endangered), Beck's petrel (*Pseudobulweria becki*) (Critically Endangered), Fiji petrel (*Pterodroma macgillivrayi*) (Critically Endangered), Chatham Islands petrel (*P. axillaris*) (Critically Endangered), Cook's petrel (*Pterodroma cookii*) (Vulnerable), Galapagos petrel (*P. phaeopygia*) (Critically Endangered), magenta petrel (*P. magentae*) (Critically Endangered), Heinroth's shearwater (*Puffinus heinrothi*) (Endangered), greater adjutant stork (*Leptoptilos dubius*) (Endangered), giant ibis (*Pseudibis gigantea*) (Critically Endangered), Andean flamingo (*Phoenicopterus andinus*) (Vulnerable), Brazilian merganser (*Mergus octosetaceus*) (Critically Endangered), southern helmeted curassow (*Pauxi unicornis*) (Endangered), blue-billed curassow (*Crax alberti*) (Critically Endangered), Cauca guan (*Penelope perspicax*) (Endangered), gorgeted wood-quail (*Odontophorus strophium*) (Endangered), Junin rail (*Laterallus tuerosi*) (Endangered), bar-winged rail (*Nesocolpeus poecilopterus*) (Extinct), Bogota rail (*Rallus semiplumbeus*) (Endangered), takahe (*Porphyrio mantelli*) (Endangered), Chatham Island oystercatcher (*Haematopus chathamensis*) (Endangered), black stilt (*Himantopus novaezelandiae*) (Critically Endangered), Jerdon's courser (*Rhinoptilus bitorquatus*) (Endangered), slender-billed curlew (*Numenius tenuirostris*) (Critically Endangered), Marquesan imperial-pigeon (*Ducula galeata*) (Critically Endangered), salmon-crested cockatoo (*Cacatua moluccensis*) (Vulnerable), Uvea parakeet (*Eunymphicus cornutus uvaensis*) (listed at the species level as Vulnerable, not listed at the subspecies level), blue-throated macaw (*Ara glaucogularis*) (Endangered), black-breasted puffleg (*Eriocnemis nigrivestis*) (Critically Endangered), Esmeraldas woodstar (*Acestrura berlepschi*) (Endangered), Chilean woodstar (*Eulidia yarrellii*) (Vulnerable), helmeted woodpecker (*Dryocopus galeatus*) (Endangered), Okinawa woodpecker (*Sapheopipo noguchii*) (Critically Endangered), yellow-browed toucanet (*Aulacorhynchus huallagae*) (Lower Risk/Near Threatened), royal cinclodes (*Cinclodes aricomae*) (Critically Endangered), white-browed spinetail (*Leptasthenura xenothorax*) (Critically Endangered), black-hooded antwren (*Formicivora erythronotos*) (Critically Endangered), fringe-backed fire-eye (*Pyriglena atra*) (Endangered), brown-banded antpitta (*Grallaria milleri*) (Endangered), Stresemann's bristlefront (*Merulaxis stresemanni*) (Critically Endangered), grey-winged cotinga (*Tijuca condita*) (Vulnerable), Brasilia tapaculo (*Scytalopus novacapitalis*) (Vulnerable), Kaempfer's tody-tyrant (*Hemitriccus kaempferi*) (Endangered), ash-breasted tit-tyrant (*Anairetes alpinus*) (Endangered), Peruvian plantcutter (*Phytotoma raimondii*) (Critically Endangered), Gurney's pitta (*Pitta gurneyi*) (Critically Endangered), Niceforo's wren (*Thryothorus nicefori*) (Critically Endangered), Socorro mockingbird (*Mimodes graysoni*) (Endangered), St. Lucia forest thrush (*Cichlherminia iherminieri sanctaeluciae*) (listed at the species level as Lower Risk/Near Threatened, not listed at the subspecies level), Moorea reed-warbler (*Acrocephalus caffer longirostris*) (listed as Vulnerable at the species level, not listed as a subspecies), Eiao Polynesian warbler (*Acrocephalus caffer aquilonis*) (listed at the species level as Vulnerable, not listed at the subspecies level), long-legged thicketbird (*Trichocichla rufa*) (Critically Endangered), caerulean Paradise-flycatcher (*Eutrichomyias rowleyi*) (Critically Endangered), Ua Pu flycatcher (*Pomarea mendozae mira*) (listed as Endangered at the species level, not listed as a subspecies), Ghizo white-eye (*Zosterops luteirostris*) (Vulnerable), Tumaco seedeater (*Sporophila insulate*) (Critically Endangered), medium tree-finch (*Camarhynchus pauper*) (Lower Risk/Near Threatened), cherry-throated tanager (*Nemosia rourei*) (Critically Endangered), and black-backed tanager (*Tangara peruviana*) (Endangered). The basis for the PEER petition was that these species had been classified as Critically Endangered, Endangered, Vulnerable, Conservation Dependent, or Near Threatened in the 1996 IUCN Red List of Threatened Animals (IUCN 1996). At the time the petition was received, listing for these species was already found to be warranted but precluded. We have taken into consideration the species' IUCN status, but as discussed in our 2000 **Federal Register** finding (65 FR 49958), the IUCN designation alone did not provide significant new information on threats to the species or their status.

As a result of this review, we find that warranted-but-precluded findings remain appropriate for 51 species. We emphasize that we are not proposing these species for listing by this notice, but we anticipate developing and publishing proposed listing rules for these taxa in the future. Seventeen species no longer warrant listing under the Act and, therefore, are being removed from the list. Finally, we will promptly publish proposals for five of the species: the giant ibis (*Pseudibis gigantean*), black stilt (*Himantopus novaezelandiae*), Gurney's pitta (*Pitta gurneyi*), Socorro mockingbird (*Mimodes graysoni*), and caerulean paradise-flycatcher (*Eutrichomyias rowleyi*).

Based on information gathered and assessed since January 12, 1995, we have updated our determinations of whether listing of these taxa continues to be warranted or warranted but precluded, or whether we have now determined that listing is not warranted. See Table 1 for a summary of these current determinations. Taxa in Table 1 of this notice are assigned to three status categories, noted in the "Category" column at the left side of the table. We identify the species for which listing is no longer warranted with an "R" in the category column. We identify the taxa for which we continue to find that listing is warranted but precluded by a "C" in the category column. We have added a third category for those species for which we find that listing is warranted and designate these taxa with an "L." The column labeled "Priority" indicates the listing priority number for all warranted or warranted-but-precluded taxa. We assign this number based on the immediacy and magnitude of threats, as well as taxonomic status. We published a complete description of our listing priority system on September 21, 1983 (48 FR 43098). Following the scientific name of each taxon (third column) is the family designation (fourth column) and the common name, if one exists (fifth column). The sixth column provides the known historical range for the taxon.

Findings on Species for Which Listing Is Not Warranted

As previously mentioned, we found that 17 species no longer warrant listing under the Endangered Species Act, and we therefore have removed them from the warranted-but-precluded list. Five of the species were considered extinct when the initial warranted-but-precluded finding was made and should not have been included on the list at that time. These species include the Colombian grebe (*Podiceps andinus*), bar-winged rail (*Nesocolpeus poecilopterus*), grey-headed blackbird (*Turdus poliocephalus poliocephalus*), Moorea reed-warbler (*Acrocephalus caffer longirostris*), and Ua Pu flycatcher (*Pomarea mendozae mira*). For six

additional species, the best available information now indicates that they are also likely to be extinct, although they were considered to be extant at the time of the original petition and when we made our previous findings. These include Kalinowski's tinamou (*Nothoprocta kalinowskii*), Beck's petrel (*Pseudobulweria becki*), the Utila chachalaca (*Ortalis vetula deschauenseei*), Stresemann's bristlefront (*Merulaxis stresemanni*), the Bananal tyrannulet (*Serpophaga araguayae*), and the long-legged thicketbird (*Trichocichla rufa*). For five species, the best available scientific information indicates that they are not taxonomically distinct, and these include Beck's petrel (*Pseudobulweria becki*)(if birds previously identified as this species are not extinct), the Italian grey partridge (*Perdix perdix italica*), hairy hermit (*Glaucis hirsuta*), Niceforo's wren (*Thryothorus nicefori*), and the Tumaco seedeater (*Sporophila insulata*). Finally, the best available scientific and commercial data indicate that the Lanyu scops owl (*Otus elegans botelensis*) and grey-winged cotinga (*Tijuca condita*) do not qualify as threatened or endangered.

Extinct Species

Kalinowski's tinamou (*Nothoprocta kalinowskii*)

Kalinowski's tinamou was endemic to Peru. It is known from only two specimens that were collected from widely scattered localities and has not been recorded since 1900 (BirdLife International 2000). One specimen was collected in 1894, in Cuzco at 4,575 meters (m), and the other was collected in 1900, on the Pacific slope east of Santiago de Chuco, western La Libertad, at 3,000 m (Collar *et al.* 1992). The Cuzco specimen was collected in an area that suggested its natural habitat was grassland or possibly a *Polylepis* woodland (BirdLife International 2000). The specimen collected on the Pacific slope of La Libertad came from a habitat of montane scrub (Collar *et al.* 1992). It is possible that the Cuzco specimen is mislabeled and was also taken at a lower elevation (BirdLife International 2000).

Virtually nothing is known about this species, but its conservation status was presumed to be critical (IUCN 2002). Threats to the species and the cause of its extreme rarity and likely extinction are unknown (BirdLife International 2000). Virtually all species of tinamous are affected by hunting and habitat alteration from the presence of man in the high Andes, and these factors may have been threats (Collar *et al.* 1992). This species has not been documented in over a century, even though Collar *et al.* (1992) had proposed that the existence of the species be confirmed. We conclude, based on the best available scientific and commercial information, that this species is extinct. We therefore find that listing of this species is no longer warranted. Because this species is known from only two specimens collected over 100 years ago, a full taxonomic evaluation of the species, involving careful evaluation of the two known skins, would be helpful to determine if it ever was a distinct taxon or is actually another species. Research on whether there is any possibility of the continued existence of this species would also be helpful.

Colombian grebe (*Podiceps andinus*)

The best available scientific and commercial information indicates that the Colombian grebe is extinct, and therefore, listing is not warranted. It was once found on several lakes on the Bogota and Ubate savannas, and in Lake Tota in the eastern Andes of Colombia (O'Donnel and Fjedsa 1997). These lakes contained tall marginal reeds and extensive shallows full of submergent water-weeds. The Colombian grebe was formerly considered abundant on Lake Tota in the 1940s, but by 1968, it had declined to approximately 300 birds (del Hoyo *et al.* 1992). There were only two records of the bird in the 1970s: one in 1972 and another one in 1977 involving one to three birds. It was sporadically sighted in various other lakes in the region of the Sabana de Bogota until the early 1950s. The last confirmed record of this species was in 1977 (World Conservation Union [IUCN] 2002). However, the validity of these last records has been questioned, and some individuals believe the species may have become extinct as early as the beginning of the 1960s. Two detailed surveys conducted in 1981 and 1982 in the wetlands of the eastern Andes of Colombia did not locate any birds (O'Donnel and Fjedsa 1997).

The decline of the Colombian grebe is attributed to wetland drainage, siltation, pesticide pollution, disruption by reed harvesting, hunting, competition, and predation of chicks by rainbow trout (*Salmo gairdneri*) (del Hoyo *et al.* 1992). However, the main cause of the decline is considered to be the drainage of wetlands, siltation, and subsequent eutrophication of Lake Tota, which destroyed the open, submergent *Potamogeton* vegetation and resulted in the formation of a dense monoculture of *Elodea* (Varty *et al.* 1986, Fjeldsa 1993, as cited in O'Donnel and Fjeldsa 1997). In the 1950s, to provide land for agriculture, the level of the lake was reduced by about one meter. This also changed the composition of the aquatic plant community from 1960 forward due to a boom in onion growing around the lake. Large amounts of fertilizers and mineral were applied at this time. The extent of shallow zones with floating vegetation was greatly reduced. The area affected was where the Colombian grebe, a foliage gleaner, obtained most of its food. The decrease in food availability markedly reduced the number of grebes and made the species more vulnerable to other adverse impacts (del Hoyo *et al.* 1992).

Beck's petrel (*Pseudobulweria becki*)

Based on the best available scientific and commercial information this species is either extinct or conspecific (*i.e.*, synonymous) with another taxon, and we conclude that it no longer warrants listing. See further discussion below under "*Taxa found to be not taxonomically distinct*" for the basis for finding that the species, if it is not conspecific with another taxon, is extinct.

Utila chachalaca (*Ortalis vetula deschauenseei*)

The Utila chachalaca was only found on Utila Island off the coast of northern Honduras. This subspecies was found in mangroves, which cover approximately three-quarters of Utila Island, and was formerly found in adjacent scrub patches. The Utila chachalaca was known to be local in 1936, but not rare. However, since that time, the population declined severely due to intense hunting pressure. In 1962, the population was estimated at 50–70 individuals. More recently, S. Midence (personal communication, as cited in Brooks and Strahl 2000) had suggested that a small population persists on the island, but del Hoyo *et al.* (1994) stated that it is possibly extinct. Results from brief surveys conducted in 1995 suggested that the population at that time was extremely small if not extinct (Seutin 1998, as cited in Brooks and Strahl 2000). Honduras has listed the species *Ortalis vetula* in Appendix III of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Considering the historic decline of the species, that some ornithologists have considered this species to be extinct for 10 years or more, and that no confirmed sightings have occurred in over 10 years, we conclude that the best available scientific and commercial information indicates that this species is extinct and its listing is no longer warranted.

Bar-winged rail (*Nesocolpeus poecilopterus*)

The best available scientific and commercial information indicates that the bar-winged rail is extinct, and therefore listing of this species is not warranted. It is known from twelve 19th Century specimens from Vitu Levu and Ovalau, reports from Taveuni, and in 1973, from Waisa and Vitu Levu, all in Fiji (Holyoak 1979, as cited in BirdLife International 2000). This was a flightless bird that inhabited remote forested areas, old overgrown plantations, and possibly lowland swamps (Pratt *et al.* 1987). Two other rails from these islands have become extinct due to predation by introduced mongooses (*Herpestes* spp.) and cats (*Felis domesticus*). BirdLife International (2000) classifies the bar-winged rail as extinct.

Stresemann's bristlefront (*Merulaxis stresemanni*)

Stresemann's bristlefront is known from just two specimens from eastern Brazil: one collected near Salvadore in the 1830s and a second from Ilheus in 1945 (BirdLife International 2000). Nothing is known about this species, and recent surveys have failed to find any individuals. The humid forest in Bahia, the presumed range of the species, has been cleared or converted to cacao plantations, and the remaining patches are disappearing very rapidly (BirdLife International 2000). This species is categorized as Critically Endangered by the IUCN because, if it is extant, its population is likely to be very tiny (IUCN 2002), and it continues to be protected by Brazilian law. BirdLife International (2000) recommends that surveys be conducted to locate any extant populations. Fieldwork is needed not only to confirm the continued existence of the species but to provide information on its ecological requirements if it exists (BirdLife International 2001). Based on the best available scientific and commercial information, particularly the lack of sightings and extensive loss of habitat, we conclude that this species is now extinct and its listing is not warranted.

Bananal tyrannulet (*Serpophaga araguayae*)

The Bananal tyrannulet appears to be known only from the type specimen from Ilha do Bananal, Goias, Brazil (Traylor 1979, as cited in Collar *et al.* 1988), and has not been relocated in the wild despite several searches. We have therefore determined that the species is extinct, and we no longer find that listing of this species is warranted.

Grey-headed blackbird (*Turdus poliocephalus poliocephalus*)

The grey-headed blackbird has been classified by Environment Australia as extinct. The subspecies was last seen in 1975 and there have been no records since, despite searches (Garnett and Crowley 2000). It was endemic to Norfolk Island and originally probably occurred throughout the island. The principle reason for the grey-headed blackbird's disappearance was the arrival of black rats (*Rattus rattus*) in the 1940s (Robinson 1988, as cited in Garnett and Crowley 2000). Hybridization with the European blackbird (*Turdus merula*) may have also played a part in the decline of the subspecies (Schodde and Mason 1999, as cited in Garnett and Crowley 2000). The best available scientific and commercial information indicates that this species is extinct, and therefore listing is not warranted.

Moorea reed-warbler (*Acrocephalus caffer longirostris*)

This subspecies was considered nearly extinct in 1986 (Sherley 2001). An expedition in 1921 reported that this endemic form on Moorea Island (Society Islands) was less common and localized than previously thought. Investigative surveys in 1971–1973 located two pairs in the interior of the island (Sherley 2001). However, research conducted in December 1986 and January 1987 yielded no evidence of this warbler's continued existence, and Thibault and Guyot (1988) considered it extinct. Thus, we conclude that the best available scientific and commercial information indicates that this subspecies is extinct, and listing of this subspecies is not warranted. Three other forms of this species, endemic to certain islands, are also extinct, whereas the nominate form is widespread on many islands (Birds of French Overseas Territories 2003).

Long-legged thicketbird (*Trichocichla rufa*)

The long-legged thicketbird was endemic to Viti Levu and Vanua Levu on Fiji (BirdLife International 2000). It was secretive and foraged on the ground beneath dense vegetation in rainforests above 800 m (Pratt *et al.* 1987). This species is known from very few specimens and has been considered to be extinct (Watling 1982, as cited in BirdLife International 2000). Observations from 1967, 1973, 1991, and more recently remain unconfirmed (D. Watling, personal communication 2000, as cited in BirdLife International 2000). Predation by introduced mongooses (*Herpestes auropunctatus*), possibly cats, and black rats (*Rattus rattus*) may be threats (BirdLife International 2000). This species is categorized as data deficient by the IUCN. However, we conclude that the best available scientific and commercial information indicates that this species is extinct, and that listing of the species is no longer warranted.

Ua Pu flycatcher (*Pomarea mendozae mira*)

Pomarea mendozae was formerly widespread in the central Marquesas Islands, French Polynesia, and comprised four subspecies (Collar *et. al.* 1994). On Ua Pu, the Ua Pu flycatcher was not located during 1989 or 1990, or during intensive searches in 1994 and 1998 (Thibault and Meyer, as cited by BirdLife International 2003). The best available scientific and commercial information indicates that this subspecies is now extinct (BirdLife International 2003), and therefore listing is not warranted.

Taxa Found To Be Not Taxonomically Distinct

Beck's petrel (*Pseudobulweria becki*)

Beck's petrel is known from only two specimens: a female taken at sea east of New Ireland and north of Buka, Papua New Guinea, in 1928, and a male taken northeast of Rendova, Solomon Islands, in 1929 (BirdLife International 2000). If it survives at all, it is thought that this species probably nests on small islets or high mountains on larger islands (BirdLife International 2000), but this species is very poorly known. This species may potentially be threatened by predation from introduced cats and rats on its unknown breeding grounds (BirdLife International 2000). This species is categorized as Critically Endangered by the IUCN because it is suspected to have a tiny population. However, if recent sightings of presumed Tahiti petrels *Pseudobulweria rostrata* in the Bismarck Archipelago and Solomon Islands prove to be, in fact, Beck's petrels, population estimates will increase and perhaps cause the species to be categorized as Endangered (IUCN 2002). There are a number of target actions identified for this species by BirdLife International. These include various surveys as well as investigating the taxonomic validity of specimens to determine this species' relationship with the Tahiti petrel, with which it may be conspecific (BirdLife International 2000).

The best available scientific and commercial information indicates that this species is either extinct or conspecific (*i.e.*, synonymous) with another taxon, and we conclude that it no longer warrants listing.

Italian grey partridge (*Perdix perdix italica*)

The Italian grey partridge was described at the beginning of the 20th Century from a limited number of museum specimens (BirdLife International 1999). Subsequently, its taxonomic validity was questioned (Violani *et al.* 1988, as cited in BirdLife International 1999). Currently, the subspecies *italica* is normally included within the nominate *perdix*, even if taxonomy of the species may be subject to further study (*e.g.*, as recommended by del Hoyo *et al.* 1994). The status of the grey partridge (*Perdix perdix*) is considered secure because it is still widespread and estimated to number several million birds (del Hoyo *et al.* 1994). Because we agree that the Italian grey partridge is no longer considered distinct from the nominate species, we conclude that it no longer warrants listing.

Hairy hermit (*Glaucis hirsuta;* Previously Referred to as black barbthroat [*Threnetes grzimeki*])

The black, or Grzimek's, barbthroat (species name used in the original petition) was first described as a new species in 1973 by Ruschi from Espiritu Santo (Sibley and Monroe 1990). It is currently included with the hairy hermit (*Glaucis hirsuta;* Sick 1993), since it has been determined that it was described based on the plumage of an immature male *G. hirsuta* (del Hoyo *et al.* 1999; Sibley and Monroe 1990). Two subspecies are currently recognized: *G. h. insularum*, found in Grenada and Trinidad and Tobago, and *G. h. hirsute*, found in Panama, Colombia west of the Andes, and east of the Andes to central Bolivia, through Venezuela to the Guianas, and almost all of Brazil (del Hoyo *et al.* 1999). It is found in the understory of many types of forest and dense vegetation outside primary forests, second growth, woodland clearings, disturbed and secondary forest, riverine habitats, swamps, shrubs, and forest edge (del Hoyo *et al.* 1999; Sick 1993). It is not globally threatened and is generally common throughout much of its extensive range (del Hoyo *et al.* 1999). *Glaucis hirsuta* is listed in Appendix II of CITES.

Based on the best available scientific and commercial information, we conclude that listing of the black barbthroat is no longer warranted because it has been determined to be conspecific with a species that is common within its range and not a distinct, rare species.

Niceforo's wren (*Thryothorus nicefori*)

Niceforo's wren occurs on the west slope of the eastern Andes in Santander, Colombia (BirdLife International 2000). It is known only from the type locality at San Gil on the Rio Fonce, south of Bucaramanga, where seven specimens, including the type, were taken in 1945 (Meyer de Schauensee 1946, as cited in BirdLife International 2000). There appear to be no further records until 1989, when two birds were seen in dense *Acacia* scrub in a semi-arid valley a short distance east of San Gil (Collar *et al.* 1992). This species is considered Critically Endangered by IUCN because its known population is tiny, inferred to be declining, and known from only one site in a region where the habitat is highly modified and habitat degradation is continuing (IUCN 2002). The threats to this species are unclear because the dependence on *Acacia* scrub and the extent of occupied habitat is not known (BirdLife International 2000). Suitable habitat may have been lost to agricultural conversion, and the remaining *Acacia* scrub is threatened by goat and cattle grazing and seasonal burning for farming (Collar *et al.* 1992).

Mayr and Greenway (1960) and Ridgely and Tudor (1989) have suggested that this bird may be a well-marked subspecies of the widespread rufous-and-white wren (*Thryothorus rufalbus*) (Collar *et al.* 1992). In Colombia, this wren is found from the Caribbean lowlands to the llanos east of the Andes (Hilty and Brown 1986). The most recent observation of Niceforo's wren showed that it sounds exactly like the rufous-and-white wren and responds to a tape of that species (P. Kaestner *in litt.* 1992, as cited in Collar *et al.* 1992). Validity as a separate species is doubtful (F. G. Stiles *in litt.* 1999, as cited in BirdLife International 2000). Therefore, because of the significant information indicating that this is not a distinct taxon, but is a variant of a widespread species, we conclude that listing of this species is not warranted.

Tumaco seedeater (*Sporophila insulata*)

The Tumaco seedeater is described from islands and river deltas on the coast of southwest Colombia (BirdLife International 2000). The type-series was collected in 1912 (Chapman 1917, as cited in Collar *et al.* 1992), and the bird was not seen again until it was rediscovered 82 years later in 1994 on Isla Bocagrande (Salaman 1995). In 1998, birds were found on Isla Aji in the Rio Naya Delta, Valle del Cauca (Gomez, *in litt.* 1999, as cited in BirdLife International 2000). It could be extinct on Tumaco (Salaman 1995), and it was not found on Isla Bocagrande after 3 days of searching in December 1999 (Strewe, *in litt.* 2000). This species is classified as Critically Endangered in the 2002 IUCN Red List because it has a very small range and the population is declining to the extent that it is possibly extirpated from Tumaco (IUCN 2002). The population estimate for this species is 250–999 birds with a decreasing population trend (BirdLife International 2000). Development is the major threat (*ibid.*). Nonetheless, information indicates that the species status should be re-assessed based on taxonomy. Ridgely and Tudor (1989) concluded that the Tumaco seedeater is almost certainly allied to the more common chestnut-throated seedeater (*S. telasco*), or may represent a hybrid between the chestnut-throated seedeater and the ruddy-breasted seedeater (*S. minuta*), although they indicate that the taxonomic relationship of *S. insulata* and *S. telasco* should be investigated further, along with other closely related species of *Sporophila*.

We conclude that listing of this species is no longer warranted based on this information on taxonomy. The best available scientific information indicates that this taxon is either a conspecific of a more common species or a hybrid of two known species.

Taxa That Are Not Threatened or Endangered

Lanyu scops owl (*Otus elegans botelensis*)

The Lanyu scops owl is not considered globally threatened, and we note that this subspecies has been regularly omitted from lists of globally threatened birds (Collar *et al.* 1988, BirdLife International 2001). This subspecies is found on Lanyu Island, off the coast of southeastern Taiwan (del Hoyo *et al.* 1999). In the mid-1980s, the Lanyu scops owl was listed as Endangered by IUCN because its population was estimated at about 200 individuals. Since that time, numbers have grown, and recently, the population has been determined to be stable at about 1,000 individuals (del Hoyo *et al.* 1999). Currently, the IUCN categorizes *Otus elegans* as Lower Risk/Near-Threatened (IUCN 2002). The species is listed in Appendix II of CITES, as are all members of the Order Strigiformes unless they are listed in Appendix I.

The status of this species has improved considerably since our original warranted-but-precluded finding was made. Based on the best available scientific and commercial information, we have evaluated the status of this subspecies according to the five factors contained in Section 4(a)(1) of the Act for determining whether a species is endangered or threatened, as follows:

The present or threatened destruction, modification, or curtailment of its habitat or range: The Lanyu scops owl is restricted to the relatively small (45 km^2) tropical island of Lanyu, located southeast of Taiwan. Studies have shown that, although the amount of suitable habitat is limited, all available nesting habitat is saturated (Severinghaus 2000), and prospects for the survival of the Lanyu scops owl are considered good as long as the habitat is protected (BirdLife International 2000). We are not aware of any specific information on current threats to the habitat of this subspecies.

Overutilization for commercial, recreational, scientific, or educational purposes: There is no documentation of overutilization of this subspecies, if it is utilized at all. However, even if it were to be utilized for some purpose, such use would be regulated internationally through the current listing of this and all owls in the Appendices to CITES, which requires that any trade must be both legal and non-detrimental to the survival of the species.

Disease or predation: There is no information to suggest that the Lanyu scops owl is subject to any threat from disease or predation.

The inadequacy of existing regulatory mechanisms: Although the Lanyu scops owl might benefit in the long term from more formal protection of its habitat, the lack of current protection does not appear to present a problem for the species, since no immediate threat to the habitat has been identified.

Other natural or manmade factors affecting its continued existence: Due to the lack of any information on current threats to the Lanyu scops owl, and because it has been able to increase to five times the estimated population size of 20 years ago, there is no indication that this subspecies is being adversely affected by any other natural or manmade factors.

Therefore, we conclude that this subspecies is not in danger of extinction or likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range, and that listing of the Lanyu scops owl is no longer warranted.

Grey-winged cotinga (*Tijuca condita*)

The grey-winged cotinga is restricted to the Serra dos Orgaos and the Serra do Tingua in the vicinity of Rio de Janeiro, Brazil (BirdLife International 2000). It has been recorded from small patches of extremely humid elfin cloud-forest rich in bromeliads with an even canopy 5–10 m above the ground (Snow 1982). It is found on both exposed ridge-tops and on sheltered slopes in an otherwise open area of bamboo and tussock grass (ibid.). It is classified as Vulnerable in the 2002 IUCN Red List because it has a small range restricted to two adjacent montane areas (IUCN 2002). The population is estimated at 1,000–2,499 individuals and is considered stable (BirdLife International 2000). Scott and Brooke (1985, as cited in Collar *et al.* 1988) found that this species is clearly rare and local, and occurs at a very low density, and the total area of suitable habitat is small. However, there is little reason to believe that it was ever much more numerous than at present. There are no major threats to its habitat, although both disturbance and fires caused by hikers have been considered potential threats (BirdLife International 2000). Both populations occur within the protected areas of Serra dos Orgaos National Park and the Tingua Biological Reserve (*ibid.*).

This species currently has a stable population at approximately historic levels, is not subject to significant threats within its range, and occurs within protected areas. Based on the best available scientific and commercial information, we have evaluated the status of this species according to the five factors contained in section 4(a)(1) of the Act for determining whether a species is endangered or threatened, as follows:

The present or threatened destruction, modification, or curtailment of its habitat or range: This species has a limited area of suitable habitat, but this is believed not to have changed over time. Its habitat is described as naturally fragmented (BirdLife International 2003). There is a potential threat from fire, but otherwise, no specific threat to the species' habitat (Scott and Brooke 1985, as cited in Collar *et al.* 1988).

Overutilization for commercial, recreational, scientific, or educational purposes: There is no information to suggest that this species is used by humans for any purpose, and therefore it is not being overutilized.

Disease or predation: There is no information to indicate that this species is threatened by disease or predation.

The inadequacy of existing regulatory mechanisms: The habitat of both known populations of this species is protected within a National Park and a Reserve. Although the species is not specifically protected under national law in Brazil, no threat has been identified for which such overarching protection is required.

Other natural or manmade factors affecting its continued existence: There is no information to indicate that any other natural or manmade factors are adversely affecting this species.

Therefore, we conclude that this species is not in danger of extinction or likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range, and that listing of the grey-winged cotinga is no longer warranted.

Findings on Species for Which Listing Is Warranted but Precluded

Issuance of proposed listing rules for most of the warranted-but-precluded species, even those with the highest listing priority numbers (*i.e.*, 1, 2, or 3) will continue to be precluded over the next year due to the need to complete pending proposals to determine if other species are endangered or threatened. Over the next year, we will work on final determinations for three African antelopes (scimitar-horned oryx [*Oryx dammah*], addax [*Addax nasomaculatus*], and dama gazelle [*Gazella dama*]); the Tibetan antelope (*Pantholops hodgsonii*); and the scarlet-chested parakeet (*Neophema splendida*) and turquoise parakeet (*Neophema pulchella*). We must also make the required 12-month petition findings on the Mexican bobcat (*Lynx rufus escuinapae*) and seven foreign butterfly taxa (*Teinopalpus imperialis, Protographium marcellinus* [previously referred to as *Eurytides marcellinus*], *Mimoides lysithous harrisianus* [previously referred to as *Eurytides lysithous harrisianus*], *Parides ascanius, Parides hahneli, Troides* [= *Ornithoptera*] *meridionalis*, and *Pterourus esperanza* [previously referred to as *Papilio esperanza*]).

In addition, we must meet our other statutory and treaty obligations. In determining the resources for listing warranted-but-precluded species, we must balance these needs with the resources needed for completing the other non-discretionary activities funded under the International Wildlife Trade budget component of the International Affairs program. This budget component includes not only all of these listing activities, but also issuing permits under the Act and mandatory activities for U.S. implementation of the Convention on International Trade in Endangered Species of Wild Fauna and Flora

(CITES), the Wild Bird Conservation Act of 1992, certain permitting provisions of the Marine Mammal Protection Act, issuing Injurious Wildlife permits under the Lacey Act, and parts of the Pelly Amendment (section 8 of the Fisherman's Protective Act). Therefore, the resources available for listing actions under the Act for foreign species is limited by competing non-discretionary activities funded from the International Wildlife Trade budget.

Based on these considerations, we have determined that sufficient resources are available to proceed with the five highest-priority species, which were previously found to be warranted but precluded in our reviews (see "Findings on Species for which Listing is Warranted" below).

We have found that, for the following 51 species, listing continues to be warranted but precluded. As previously indicated, this means that immediate publication of a proposed rule to list the species is precluded by higher-priority listing actions, and that we are making expeditious progress to add and remove species from the List, as appropriate. We will continue to monitor the status of these species as new information becomes available. Our review of new information will determine if a change in status is warranted, including the need to emergency list any species.

Junin flightless grebe (*Podiceps taczanowskii*)

The Junin flightless grebe is confined to Lake Junin, which is located 4,080 m above sea level in central Peru (Fjeldsa 1981, as cited in O'Donnel and Fjedsa 1997). The lake, which covers approximately 14,320 hectares, reaches a depth of 10 m in its center and is bordered by extensive reed marshes. These reed marshes can be continuous in places, but also form a mosaic with stretches of open water. Considerable areas of the lake are shallow, with the bottom densely covered with *Chara* (del Hoyo *et al.* 1992). The Junin grebe is a bird of open lake habitat and stays far off-shore in the center of the lake for part of the year. However, during the breeding season, it goes to areas of tall *Scirpus* (*californicus*) *tatora* or bays and channels in the outer edge of the 2–5-km-wide reed marshes surrounding the lake (O'Donnel and Fjedsa 1997). The Junin grebe feeds mainly on fish (*Orestias*), which make up approximately 90% of its diet (del Hoyo *et al.* 1992).

The Junin grebe experienced a dramatic decline during the 20th Century. The species was considered abundant in 1938, and common in 1961, with estimates of several thousand birds (del Hoyo *et al.* 1992). Current population estimates for the Junin grebe are between 50 and 249 birds, with a decreasing population trend (BirdLife International 2000). Because of this decline, and because it is endemic to one Andean lake, the Junin grebe qualifies as Critically Endangered on the IUCN Red List (IUCN 2002). The decline in numbers of this species was brought about by pollution of Lake Junin by local mining activities and variations of up to 7 m in water level, which is controlled by a hydroelectric power station. These changes in water level caused nesting and foraging areas to dry out (BirdLife International 2000), and in 1969, the vegetation of Lake Junin appeared to be dyed yellow with breakdown products of sulphuric acids and toxic fumes from a copper mine (del Hoyo *et al.* 1992). Of less significance was the introduction of trout in the 1930s, which replaced native fish species. Since 1975, some conservation measures have been implemented: Lake Junin was declared a reserve, and the Peruvian government nationalized the mines of Cerro del Pasco in an attempt to prevent pollution by the mine (del Hoyo *et al.* 1992).

The Junin flightless grebe does not represent a monotypic genus. It faces threats that are high in magnitude and imminent. It therefore receives a priority rank of 2.

Fiji petrel (*Pterodroma macgillivrayi*)

The Fiji petrel is marine and presumably pelagic (del Hoyo *et al.* 1992). It was originally known from just one specimen collected in 1855 on Gau Island and more recently from eight records of sightings on the island since 1983 (BirdLife International 2000). The only other record is a reported sighting at sea over 200 km north of Gau (Watling 2000, as cited in BirdLife International 2000). The Fiji petrel's breeding grounds have yet to be discovered, but may be located in areas of undisturbed mature forest or on rocky, mountainous ground (del Hoyo *et al.* 1992). The Fiji petrel is classified as Critically Endangered by the IUCN because it is inferred, given the paucity of recent records, that there is only a tiny population confined to an extremely small breeding area (IUCN 2002). The population is estimated at fewer than 50 individuals and is assumed to be declining because of predation by cats, which may threaten its long-term survival (BirdLife International 2000). However, very little is known about the species. It is protected under Fijian law, and priorities for the species include conducting surveys on Gau and other suitable islands and reinforcing existing community awareness (BirdLife International 2000).

The Fiji petrel does not represent a monotypic genus. The magnitude of threat to the species is high, but the immediacy of threat is non-imminent. Therefore, it receives a priority rank of 5.

Chatham petrel (*Pterodroma axillaris;* Previously Referred to as *Pterodroma hypoleuca axillaris*)

The Chatham petrel is found only on South East Island (*Rangatira*) in the Chatham Islands of New Zealand (BirdLife International 2000). It is marine and presumably pelagic, and breeds on coastal lowlands and slopes in areas with low forest, bracken, or rank grass (del Hoyo *et al.* 1992). It nests in burrows amongst low vegetation and roots on flat to moderately sloping ground (Marchant and Higgins 1990). This species is classified as Critically Endangered in the 2002 IUCN Red List because it is restricted to South East Island and inferred to be continuing to decline due to competition from other native burrowing seabirds (IUCN 2002). The population estimate for this species is 800–1,000 birds with a decreasing population trend (BirdLife International 2000). There is intense competition for burrows on South East Island with the abundant broad-billed prion (*Pachyptila vittata*), which may be the cause of the observed low breeding success and high rate of pair bond disruption (*ibid.*). As a conservation measure, artificial nest sites have been provided, and burrows have been blocked to prevent occupation by P. vittata (*ibid.*). Although these actions have greatly improved breeding success, only a small proportion of breeding burrows have been found (Taylor 2000).

This species does not represent a monotypic genus. It has a restricted range and its population is declining. The threat to the species is high and imminent. Therefore, this species receives a priority rank of 2.

Cook's petrel (*Pterodroma cookii*)

Cook's petrel is endemic to New Zealand. It is marine and highly pelagic in temperate and subtropical waters, and rarely approaches land except at nesting colonies (del Hoyo *et al.* 1992). Cook's petrel breeds on Little Barrier, Great Barrier, and Codfish Islands (del Hoyo *et al.* 1992) and occupies thickly forested high ridges and slopes, up to 700 m above sea level (BirdLife International 2000). This species is classified as Endangered in the 2002 IUCN Red List because it has a very small range when breeding, and

although population numbers are increasing, there is a danger that the population on Great Barrier Island may be lost (IUCN 2002). Population estimate for this species is 100,000 birds and increasing (BirdLife International 2000). Threats to this species are predominantly from invasive species such as cats, black rats (*Rattus rattus*), Pacific rats (*R. exulans*), and the weka (*Gallirallus australis*), which are major predators of adults and chicks (Heather and Robertson 1997; Taylor 2000). By 1980, cats were eradicated from Little Barrier Island, and wekas were eradicated from Codfish Island between 1980 and 1985 (Taylor 2000). Pacific rats were successfully eradicated from Codfish Island in August 1998, and eradication from Little Barrier Island has been proposed (Conservation News 2002).

This species does not represent a monotypic genus, and has a fairly good population size, which is increasing. Its primary threat is a limited breeding range and predation by introduced species. However, the threats have been reduced by eradication of introduced predators, which is ongoing. Therefore, the threat is moderate and imminent, and the species receives a priority ranking of 8.

Galapagos petrel (*Pterodroma phaeopygia;* Previously Referred to as *Pterodroma phaeopygia phaeopygia*)

The Galapagos petrel is a pelagic marine bird endemic to the Galapagos Islands, Ecuador (BirdLife International 2000). It breeds on Santa Cruz, Floreana, Santiago, San Cristobal, Isabela, and possibly other islands in the archipelago (Cruz and Cruz 1987; H. Vargas and F. Cruz *in litt.* 2000, as cited in BirdLife International 2000). This species is classified as Critically Endangered in the 2002 IUCN Red List because of its history of declines (IUCN 2002). In the early 1980s, this species underwent extremely rapid declines, in some cases by as much as 81 percent in 4 years, and the species is likely to have declined by more than 80 percent in the last 60 years (three generations) (*ibid.*). The population estimate for this species is 20,000–60,000 birds with a decreasing population trend (BirdLife International 2000). Threats for this species include introduced dogs, cats, and pigs, which take eggs, young, and adults; black rats and brown rats (*R. norvegicus*), which take eggs and chicks; nest-site destruction by goats, donkeys, cattle, and horses; and predation by the Galapagos hawk (*Buteo galapagoensis*) (Cruz and Cruz 1987; Cruz and Cruz 1996). Predator control and petrel monitoring is occurring on Floreana, Santa Cruz, and Santiago Islands (H. Vargus and F. Cruz *in litt.* 2000, as cited in BirdLife International 2000). The breeding areas on Santa Cruz, Floreana, and San Cristobal have been severely restricted due to clearance of vegetation for agriculture and intensive grazing (Cruz and Cruz 1987; Cruz and Cruz 1996), and at least half the breeding range is still farmed on Santa Cruz (Baker 1980, as cited in BirdLife International 2000). The Galapagos Islands are a national park and were declared a World Heritage Site in 1979 (BirdLife International 2000).

This species does not represent a monotypic genus, but it is declining and has persistent threats that are high in magnitude and imminent. Therefore, this species receives a priority rank of 2.

Magenta petrel (*Pterodroma magentae*)

The magenta petrel is known from Chatham Island, New Zealand. It breeds in a fragmented colony under dense forest (BirdLife International 2000) and is marine and presumably pelagic (del Hoyo *et al.* 1992). The magenta petrel was rediscovered in 1978 after 10 years of intensive searching (Crockett 1994, as cited in BirdLife International 2000). This species is listed as Critically Endangered by IUCN because it has undergone a historic decline that is assumed to be greater than 80 percent in 60 years, it has a very small population, and it is restricted to one extremely small location (IUCN 2002). The population is estimated to number 100–150 individuals, and the long-term reduction in numbers may have begun to stabilize (BirdLife International 2000). However, it is premature to assume that there is not a continuing decline. The species is predominantly threatened by introduced species that take eggs, chicks, and adults, or compete for or cause the destruction of burrows (BirdLife International 2000).

The magenta petrel does not represent a monotypic genus. The magnitude of threat to the species is high, and the immediacy is imminent. It therefore receives a priority rank of 2.

Heinroth's shearwater (*Puffinus heinrothi*)

The Heinroth's shearwater is known from the Bismarck Archipelago and around Bougainville in Papua New Guinea and Kolombangara in the Solomon Islands (Buckingham *et. al.* 1995, as cited in BirdLife International 2000). It is marine and presumably pelagic (del Hoyo *et al.* 1992). It is likely to breed on high, inaccessible mountains, where introduced rats, cats, and dogs are potential threats to this species. There are a number of target actions identified for this species by BirdLife International, which include various surveys and assessing the presence of introduced mammals on suspected breeding grounds (BirdLife International 2000). The Heinroth's shearwater is categorized as Vulnerable by the IUCN on the basis that there may be a very small population and breeding range (IUCN 2002). The population estimate for this species is 250–999 birds with an unknown population trend (BirdLife International 2000). There is no substantial evidence of a decline (IUCN 2002).

Heinroth's shearwater does not represent a monotypic genus. It faces threats that are moderate and non-imminent. Therefore, it receives a priority rank of 11.

Greater adjutant stork (*Leptoptilos dubius*)

The greater adjutant stork previously occurred, often in huge numbers, in much of South and Southeast Asia, from Pakistan through northern India, Nepal, and Bangladesh, to Myanmar, Thailand, Laos, Viet Nam, and Cambodia (BirdLife International 2000). However, the species has experienced a dramatic crash, and currently, the population estimate is at 700–800 birds (BirdLife International 2000). Breeding populations of the species remain in only two very small and highly disjunct populations: One in Assam (Saikia and Bhattacharjee 1989, as cited in BirdLife International 2001) and the other in Cambodia (Mundkur *et al.* 1995, as cited in BirdLife International 2001). In the last century, there were vast colonies of millions in Burma, and del Hoyo *et al.* (1992) indicate that in Calcutta there was "almost one on every roof." It frequents marshes, lakes, paddyfields, and open forest, and is often found in dry areas, such as grasslands and fields. It is commonly found at carcasses and rubbish dumps at the edges of towns.

The greater adjutant is classified as Endangered in the 2002 IUCN Red List. The key threats are direct exploitation, particularly at nesting colonies, habitat destruction, particularly lowland deforestation and the felling of nest trees, and drainage, conversion, pollution, and over-exploitation of wetlands. The Indian population is also considered threatened by the reduced use of open rubbish dumps for the disposal of carcasses and foodstuffs (BirdLife International 2000).

The greater adjutant stork does not represent a monotypic genus, but it faces threats that are high in magnitude and imminent. It therefore receives a priority rank of 2.

Andean flamingo (*Phoenicopterus andinus*)

The Andean flamingo is restricted to high-altitude salt lakes in the high Andes, mainly between 3,500 and 4,500 m, from southern Peru through Bolivia to northern Chile and northwestern Argentina (del Hoyo *et al.* 1992). Population assessments for this species are difficult and vary greatly, but it is believed that 50,000–100,000 individuals existed until the mid-1980s. The collection of eggs to sell as food was intensive during the mid-20th Century and early 1980s, with estimates of thousands of eggs being taken. Unfavorable water levels due to weather and manipulation, mining activities, erosion of nest sites, and human disturbance may also affect productivity. The latest population estimate, from 1997, was 33,927 birds, which suggests the species had declined rapidly during the preceding 10–15 years (BirdLife International 2000). Very low breeding success has been reported for this species (del Hoyo *et al.* 1992). The Andean flamingo was recently categorized as Vulnerable by the IUCN and is listed in Appendix II of CITES. Threats to this species include ongoing exploitation and a decline in habitat quality (IUCN 2002). Local conservation actions include habitat management, prevention of egg-collecting, and raising public awareness (BirdLife International 2000).

The Andean flamingo does not represent a monotypic genus. It faces threats that are high in magnitude and imminent. It therefore receives a priority rank of 2.

Brazilian merganser (*Mergus octosetaceus*)

The Brazilian Merganser is found in extremely low numbers at a few, highly disjunct localities in south-central Brazil (BirdLife International 2000). Its range also extends into eastern Paraguay and northeastern Argentina. It is found in rapid, torrential streams and fast-moving rivers surrounded by dense tropical forests. The species is believed to be mainly sedentary and presumably maintains its territory all year round (del Hoyo *et al.* 1992). The Brazilian merganser is a good swimmer and diver, and feeds primarily on fish and occasionally on aquatic insects and snails (Collar *et al.* 1992).

Recent records from Brazil, and particularly a recent northerly range extension, indicate that the status of this species is better than previously thought (BirdLife International 2000). However, it remains close to extinction and is considered Critically Endangered (IUCN 2002). The population is currently estimated at 50–249 individuals and is decreasing (BirdLife International 2000). Threats include the perturbation and pollution of rivers, which result predominately from deforestation, agriculture, and diamond mining in the Serra da Canastra area. Dam-building has flooded suitable habitat, especially in Brazil and Paraguay, and hunting and collection of exhibition specimens in Argentina are considered contributory factors to this species' decline (BirdLife International 2000). The Brazilian merganser is considered extinct in Mato Grosso do Sul, Rio de Janeiro, Sao Paolo, and Santa Catarina (ibid.). There is only one recent record from Misiones, Argentina (Benstead 1994; Hearn 1994, as cited in Collar *et al.* 1994), and it was last recorded in Paraguay in 1984 (BirdLife International 2001). There is little, if any, habitat left (Brooks *et al.* 1993, as cited in Collar *et al.* 1994). This species is legally protected in Brazil, where it occurs in three Brazilian national parks (del Hoyo *et al.* 1992).

This species does not represent a monotypic genus, but it faces threats that are high in magnitude and imminent. It therefore receives a priority rank of 2.

Cauca guan (*Penelope perspicax*)

The cauca guan is endemic to the west slopes of the West and Central Andes (Risaralda, Quindio, Valle del Cauca, and Cauca), Colombia (Collar *et al.* 1992). The stronghold for the species is in the Ucumari Regional Park, Risaralda (BirdLife International 2000). The Cauca guan inhabits large, humid primary forests at 1,600–2,150m (Salaman *in litt.* 1999, as cited in BirdLife International 2000). Records at 900–1,600m have been from plantations of exotic broadleaf trees, secondary forest, and forest edge (BirdLife International 2000). This species was not considered uncommon at the beginning of the 20th Century, but has suffered from severe loss of habitat (del Hoyo *et al.* 1994). The current population estimates is 1,000–2,499 individuals with a decreasing trend (BirdLife International 2000). It is also hunted for food even in some protected areas, except in Ucumari (*ibid.*). It is listed as Endangered by IUCN because it has a very small range in which severely fragmented habitat patches are declining (IUCN 2002). Its population is believed to be very small and divided into extremely small sub-populations, which are inferred to be declining from ongoing habitat loss and hunting (*ibid.*).

This species does not represent a monotypic genus, but faces threats that are high in magnitude and imminent. This species therefore receives a priority rank of 2.

Southern helmeted curassow (*Pauxi unicornis*)

The southern helmeted curassow is known from central Bolivia and central and eastern Peru, where it inhabits dense, humid, lower montane forest and adjacent evergreen forest at 450–1,200m (BirdLife International, 2000). The fallen nuts of the almendrillo (*Bryrsonima wadsworthii*) constitute this species' major food, and it presumably also takes other fallen fruits, including those from three types of laurels and negrillo (del Hoyo *et al.* 1994). The southern helmeted curassow is listed as Vulnerable on the IUCN Red List, and the population is estimated at fewer than 10,000 birds, with a decreasing population trend (BirdLife International 2000). In Bolivia, professional hunters have caused a decline in the population. In addition, local people in the area fashion cigarette lighters from the curassow's horn, or casque (Cordier 1971, as cited in Collar *et al.* 1992). In Amboro National Park, the bird is often eaten and its head skewered for use in folk dances (Hardy 1984, as cited in Collar *et al.* 1992). Other threats include forest clearing within its range, road building and development, and in Peru, oil exploration (BirdLife International 2000). Large parts of the southern helmeted curassow's range are protected by inclusion in the Amboro and Carrasco National Parks. Further work in the low Andean foothills and outlying ridges in the region of the Peru-Bolivia border is likely to reveal new populations (Collar *et al.* 1992). Discovery of new populations, as well as increased protections in Bolivian national parks and other specific measures to conserve the species, could lead to future reclassification (IUCN 2002).

The southern helmeted currasow does not represent a monotypic genus. It faces threats that are moderate in magnitude and imminent. Therefore, it receives a priority rank of 8.

Blue-billed curassow (Crax alberti)

The blue-billed curassow historically occurred in northern Colombia, from the base of the Sierra Nevada de Santa Marta west to the Sinu Valley and south in Magdalena Valley to north Tolima (BirdLife International 2000). It inhabits humid forest in lowlands and foothills and on lower mountain slopes in the tropical zone. This species of curassow occurs up to 1,200 m, but is more common below 600 m (del Hoyo *et al.* 1994). It feeds on fruit, shoots,

invertebrates, and possibly carrion (BirdLife International 2000).

The blue-billed curassow is categorized as Critically Endangered in the 2002 IUCN Red List and is listed in Appendix III of CITES by Colombia. The species was not common anywhere in the Santa Marta region at the beginning of the 20th Century, although it was perhaps most numerous in the humid lowlands of the north coast (Todd and Carriker 1922, as cited in Collar *et al.* 1992). It was becoming very rare (Haffner 1975, as cited in Collar *et al.* 1992), and by the 1980s it had disappeared from most places in which it had previously been found (Estudillo Lopez 1986, as cited in Collar *et al.* 1992). The population was estimated at 1,000–2,500 birds in 1994, and local reports have indicated more recent and rapid declines (BirdLife International 2000). Previous reports indicated that, outside of a few forest patches bordering national parks, the species is almost extinct (L.M. Renjifo, Z. Calle, D. Rodriguez personal communications, as cited in Brooks and Strahl 2000). However, some sites believed to harbor the species have been recently identified in work supported by the World Pheasant Association International (Cuervo and Salaman 1999, as cited in Brooks and Strahl 2000). Rapid deforestation in this species' range over the past decade has left little habitat. Given increased access and hunting, this curassow could undergo an extremely rapid population reduction (BirdLife International 2000). The blue-billed curassow is perhaps one of the most endangered species identified as an immediate conservation priority by the Cracid Specialist Group (Brooks and Strahl 2000). Recent international trade in this bird may be cause for alarm (J. V. Rodriguez personal communication, as cited in Brooks and Strahl 2000).

The blue-billed currasow does not represent a monotypic genus. It faces threats that are high in magnitude and imminent, and therefore it receives a priority rank of 2.

Cantabrian capercaillie (*Tetrao urogallus cantabricus*)

The Cantabrian capercaillie inhabits the Cantabrian Mountains of northern Spain (Storch 2000). It occupies a forest and woodland habitat that is mainly coniferous (especially *Pinus sylvestris*), but also contains species such as *Piscea* and *Abies* and isolated broad-leaved forests (BirdLife International 2000). It prefers extensive areas of old, shady forest, often with damp soil and interspersed bogs, areas of peat or glades, and a dense undergrowth of ericaceous plants (*ibid.*). It is currently treated as a subspecies of the western capercaillie *Tertrao urogallus*, which is not globally threatened. However, the subspecies *cantabricus* was considered to be endangered in the Red Data Book of 1978–1979 (Storch 2000; BirdLife International 2000). The population is presently estimated at 250–300 adult males, equivalent to a total population size of fewer than 1,000, but it is probably only 600–750 birds (A. Lucio personal communication, as cited by Storch 2000). The Cantabrian Capercaillie Group estimates that numbers have declined by 25–50 percent over the past 10–15 years (Storch 2000). Habitat loss, fragmentation, and degradation related to forestry and tourism, illegal hunting, and disturbance by human outdoor activities have been identified as the major causes of decline (J. Castroviejo, personal communication, as cited by Storch 2000).

This is a subspecies that faces threats that are high in magnitude and imminent. It receives a priority rank of 3.

Gorgeted wood-quail (*Odontophorus strophium*)

The gorgeted wood-quail occurs on the west slope of the east Andes of Colombia in Santander and Cundinamarca (Collar *et al.* 1992). It is found on the forest floor of temperate and subtropical forests at 1,500–2,050 m, especially those dominated by *Quercus humboldtii* (del Hoyo *et al.* 1994). The gorgeted wood-quail is probably dependent on primary forest for at least part of its life cycle, although it has been recorded in degraded habitats and secondary forest (BirdLife International 2000). Since the 17th Century, the west slope of the East Andes has been extensively logged and converted to agriculture (Stiles *et al.* 1999). Forest loss below 2,500 m has been almost complete (Stattersfield *et al.* 1998), with habitat reduced in many areas to tiny, isolated relicts on steep slopes and along streams (Stiles *et al.* 1999). This species is considered Critically Endangered by IUCN because it has an extremely small range (IUCN 2002). The population is estimated to be 250–999 individuals and declining (BirdLife International 2000). Additionally, until 1923, it was known only from Cundinamarca, but recent records have come from one of the only remaining areas of suitable habitat around Virolin in Santander Department, where logging and hunting are prevalent (Collar *et al.* 1992). Some habitat regeneration has occurred following the abandonment of marginal land (*ibid.*). Less disturbed and ornithologically unknown forests in west Boyaca and Santander might retain populations of this species (BirdLife International 2000). In November 1993, 100 km^2 of forest at Virolin was gazetted as a reserve, the Guanenta—Alto Rio Fonce Flora and Fauna Sanctuary (Andrade and Repizzo 1994), which provides some protection.

This species does not represent a monotypic genus. The threat to the species is high in magnitude and imminent. It receives a priority rank of 2.

Junin rail (*Laterallus tuerosi*)

The Junin rail is endemic to the Andean Highlands of central Peru along the shores of Lago de Junin (BirdLife International 2000). It is known to inhabit the rushy marsh vegetation bordering the lake, but details on habitat preference are lacking (Fjeldsa 1983, as cited in Collar *et al.* 1992). These secretive birds have been seen in areas that contain mosaics of small beds of 1-m-tall *Juncus andecolus* and open areas with bottom mosses and herbs (ibid). This species is classified as Endangered in the 2002 IUCN Red List because it has a very small range around a single lake where habitat quality is declining (IUCN 2002). The population estimate for this species is 1,000–2,499 birds, with a decreasing population trend (BirdLife International 2000). Since 1955, Lago de Junin has been affected by pollution and human-induced water-level changes, which may be adversely affecting the fringe vegetation (J. Fjeldsa 1987 personal communication, as cited in Collar *et al.* 1992). Reed marshes have also been dessicated from drought and unsustainable water management by Electro Peru and occasional flooding with highly acidic water from the Cerro de Pasco mines (J. Fjeldsa *in litt.* to Taylor and van Perlo 1998, as cited in BirdLife International 2000). Although the lake is a national reserve, this has not influenced mining and dam-building activities.

The Junin rail does not represent a monotypic genus. It faces threats that are high and imminent. It therefore receives a priority rank of 2.

Bogota rail (*Rallus semiplumbeus*)

The Bogota rail is found in the East Andes of Colombia on the Ubate-Bogota Plateau in Cundinamarca and Boyaca. It occurs in the temperate zone, at 2,500–4,000 m (occasionally as low as 2,100 m) in savanna and paramo marshes (BirdLife International 2000). This rail frequents wetland habitats that are fringed by dense, tall reeds and bulrushes, and contain vegetation-rich

shallows. It often feeds along the water's edge, in flooded pasture, wet fen, or within patches of dead water-logged vegetation nearby (Varty *et al.* 1986; Fjeldsa and Krabbe 1990). It feeds primarily on aquatic invertebrates and insect larvae, but also takes worms, molluscs, dead fish, frogs, tadpoles, and plant material (Varty *et al.* 1986).

This species is listed as Endangered by the IUCN primarily because its range is very small and contracting, in part due to local extirpations. The population has become severely fragmented and is declining for a variety of reasons, including habitat loss and degradation (IUCN 2002). The current population is estimated to be between 1,000 and 2,499 individuals and is decreasing (BirdLife International 2000). Although the Bogota rail is declining, it is still uncommon to fairly common, with some notable populations, including approximately 400 birds at Laguna de Tota, about 50 territories at Laguna de la Herrera, about 110 birds at Parque La Florida, and those at La Conejera marsh and Laguna de Fuquene (BirdLife International 2000). Some of the birds occur in protected areas such as Chingaza National Park and Carpanta Biological Reserve. However, savanna wetlands are virtually unprotected.

The Bogota rail does not represent a monotypic genus. It is subject to threats that are moderate in magnitude and imminent. Therefore, it receives a priority rank of 8.

Takahe (*Porphyrio mantelli*; Previously Referred to as *Notornis mantelli*)

The takahe is endemic to New Zealand and is unique as the world's largest living member of the rail family (del Hoyo *et al.* 1996). The species, *Porphyrio mantelli*, is the remnant of the South Island population resulting from speciation. The North Island species *Porphyrio hochstetteri*, which was taller and thinner boned, is extinct (TerraNature Trust 2003). Subfossils show that this bird was once widespread in the North and South Islands. However, when this species was rediscovered in 1948, it was confined to the Murchison Mountains in Fiordland (BirdLife International 2000). It is restricted to alpine tussock grasslands on the mainland and feeds primarily on juices from the bases of snow tussock and the rhizome of a fern species (*ibid.*). The takahe is listed as Endangered by the IUCN because it has an extremely small population (IUCN 2002). The main cause of the species' decline was competition for food from the introduced red deer, *Cervus elaphus*, which also modified habitat by grazing (del Hoyo *et al.* 1996). It may also be affected by predation by stoats, *Mustela erminea* (BirdLife International 2000). Other potential competitors or predators include the introduced brush-tailed possum, *Trichosurus vulpecula*, and the threatened weka, *Gallirallus australis* (New Zealand Department of Conservation 1997). For the last 20 years, the population has fluctuated between 100 and 160 birds (Maxwell in press, as cited in BirdLife International 2000). Populations have been established on four predator-free offshore islands—Kapiti, Mana, Tiritiri Matangi, and Maud—from birds translocated between 1984 and 1991 (BirdLife International 2000). Overall, numbers are slowly increasing due to intensive management of these island populations, although there are fluctuations in the remnant mainland population (IUCN 2002). Since the 1960s, deer have also been controlled in the Murchison Mountains (BirdLife International 2000).

The takahe does not represent a monotypic genus. It faces threats that are moderate in magnitude and imminent. Therefore, it receives a priority rank of 8.

Chatham oystercatcher (*Haematopus chathamensis*)

The Chatham oystercatcher is endemic to the Chatham Islands, New Zealand (BirdLife International 2000). It is mostly found on rocky shores, less often on sandy or gravel beaches, and sometimes nests in sites with some short vegetation (del Hoyo *et al.*1996). This species is classified as Endangered in the 2002 IUCN Red List because it has a very small population (IUCN 2002). The Chatham oystercatcher population has increased from approximately 50 birds in the early 1970s to 100–110 birds in the breeding season of 1987–1988, which included 44 breeding pairs (del Hoyo *et al.* 1996). A census conducted in 1998 revealed 140–150 birds, which represented a significant increase (BirdLife International 2000). However, numbers of birds on South East Island appear to have gradually declined since the 1970s (Schmechel and O'Connor 1999, as cited in BirdLife International 2000). Introduced predators, as well as cattle and sheep, are a major threat on Pitt and Chatham Islands (BirdLife International 2000). South East and Mangere are free of mammalian predators, but populations are highly variable, and the causes of the decline occurring on South East Island are unknown (Schmechel and O'Connor 1999, as cited in BirdLife International 2000). The birds on the Chatham Islands are protected through active management. Nest manipulation, fencing, signage, intensive predator control, and a research program aimed at assessing the effects of predators, flooding, and management on breeding success have been initiated (BirdLife International 2000).

The Chatham oystercatcher does not represent a monotypic genus. It faces threats that are moderate in magnitude and imminent, and therefore it receives a priority rank of 8.

Jerdon's courser (*Rhinoptilus bitorquatus*; previously referred to as *Cursorius bitorquatus*)

Jerdon's courser is endemic to southern India, where it is principally known from southern Andhra Pradesh, from the Godaveri River Valley near Sironcha and Bhadrachalam, and from the Cuddapah and Anantapur areas in the valley of the Pennar River (Ripley and Beehler 1989; Ali and Ripley 1968–1998, as cited in BirdLife International 2001). It is found in sparse, thorny and non-thorny scrub-forest and bushes, interspersed with patches of bare ground, in gently undulating rocky foothills (BirdLife International 2000). Historically, it was known from just a few records in the Pennar and Godavari river valleys and was assumed to be extinct until 1986, when it was rediscovered around Lankamalai.

Jerdon's courser is listed as Critically Endangered by the IUCN because of its single small, declining population. It is thought to be threatened by exploitation of the scrub-forest, livestock grazing, disturbance, and quarrying (IUCN 2002). The population estimate for this species is 50–249 birds, with a decreasing population trend (BirdLife International 2000). Very few individuals have been recorded so far, mainly due to its nocturnal, shy, and retiring habits (*ibid.*). Between 1986 and 1995, there have been eight sightings of the species in the Lankamalai area (Bhushan 1995, as cited in BirdLife International 2001). However, it may occur in much higher densities than currently known (BirdLife International 2001). Members of the Yanaadi community, who played a major role in the rediscovery of the species, were employed by the State Forest Department to locate individuals in other localities and habitats in the Eastern Ghats, but the results are unknown (Bhushan 1995, as cited in BirdLife International 2001).

Jerdon's courser does not represent a monotypic genus. The current threat to the species is high and imminent, and therefore, it receives a priority rank of 2.

Slender-billed curlew (*Numenius tenuirostris*)

The slender-billed curlew migrates along a west-southwest route from Siberia through central and eastern Europe (predominantly Russia, Kazakhstan, Ukraine, Bulgaria, Hungary, Romania, and Yugoslavia) to southern Europe (Greece, Italy, and Turkey) and northern Africa (Algeria, Morocco, and Tunisia) (BirdLife International 2000). Breeding has only been confirmed near Tara, north of Omsk, in Siberia, Russia, between 1914 and 1924; there have been no breeding records since 1925 (del Hoyo *et al.* 1996). The only known nests were recorded on the northern limit of the forest—steppe zone in habitat more typical of taiga marsh (BirdLife International 2000). During migration and winter, a wide variety of habitats are used, including steppe grassland, marshland, salt pans, brackish lagoons and wetlands, tidal mudflats, fish ponds, semi-desert, and sandy farmland next to lagoons (*ibid.*).

During the 19th Century, the slender-billed curlew was regarded as very common (BirdLife International 2000), but declined dramatically in the 20th Century. It is considered Critically Endangered by the IUCN because it has an extremely small population and the number of birds recorded annually continues to decrease (IUCN 2002). This species is also listed in CITES Appendix I. Flocks of over 100 birds were recorded from Morocco as late as the 1960s and 1970s (BirdLife International 2000). However, between 1980 and 1990, there were only 103 records involving 316–326 birds, and from 1990 to 1999, this dropped to 74 records involving 148–152 birds (*ibid.*). Most recent records are of 1–3 birds, with the exception of a flock of 19 birds in Italy in 1995. In 1994, the population was estimated at only 50–270 birds, but records suggest it may now be lower. Threats to the breeding grounds are unknown (BirdLife International 2000), although it has recently been suggested that the main breeding areas may have been located in the steppe zone, which has been cultivated on a large scale, perhaps explaining the rapid decline of the species (del Hoyo *et al.* 1996). Historically, hunting was high and may have been a key factor in the species' historical decline (BirdLife International 2000). Wetlands in North Africa and the Mediterranean, and potentially important areas in Iraq, have been extensively drained (*ibid.*).

The slender-billed curlew does not represent a monotypic genus. The magnitude of threat to the species is high, but non-imminent. Therefore, the priority rank for this species is 5.

Marquesan imperial-pigeon (*Ducula galeata*)

The Marquesan imperial-pigeon is endemic to Nuku Hiva in the Marquesas Islands, French Polynesia. It is restricted to valleys in remote wooded valleys from 250 to1,300 m elevation in the west and north of the island. It is also seen in secondary forest and at the edge of banana and orange plantations (BirdLife International 2002). The Marquesan imperial-pigeon is categorized as Critically Endangered in the 2002 IUCN Red List because it has a very small population on one tiny island (IUCN 2002). Illegal hunting is the main threat, and the species' habitat has been modified and degraded by introduced vegetation and grazing from feral livestock (BirdLife International 2002). In 1975, the population was estimated at 200–400 birds by Holyoak and Thibault (1984), and in 1998, a minimum of 85 birds was seen and the population was estimated at about 250 birds (Evva 1998). The Marquesan imperial-pigeon survives because it exists in several areas that are difficult to access by hunters and introduced grazers, and that have not been colonized by rats (IUCN 2002).

The Marquesan imperial-pigeon is a species that does not represent a monotypic genus. It faces threats that are of high magnitude and imminent. Therefore, it receives a priority rank of 2.

Salmon-crested cockatoo (*Cacatua moluccensis*)

The salmon-crested cockatoo is found, and perhaps endemic to, Seram in the South Moluccas, Indonesia, with records from the adjacent islands of Haruku, Saparua, and Ambon. There is some speculation that records from locales other than Seram might all relate to birds of captive origin (BirdLife International 2001). Lowland rain forest below altitudes of 1,000 m and unlogged lowland forest below 300 m are clearly the most productive habitat (Marsden 1998). Studies conducted in 1998 suggested that habitat rich in strangler fig trees and the key nest tree, *Octomeles sumatranus,* holds the highest densities of cockatoos, but this needs confirmation (Kinnaird *et al.* in prep., as cited in BirdLife International 2000). The diet of salmon-crested cockatoos consists of seeds, nuts (including coconuts), berries, and insects and their larvae (Forshaw 1989).

The salmon-crested cockatoo was formerly a common species of the lowlands within its range (del Hoyo *et al.* 1997). There are no recent records from Saparua and Haruku, and it may only survive at one locality on Ambon, which leaves almost the entire population on Seram in the Manusela National Park (BirdLife International 2000). This species is one of three threatened members of the suite of 14 bird species that are entirely restricted to the Seram Endemic Bird Area (BirdLife International 2001). It is listed as Vulnerable in the IUCN 2002 Red List (IUCN 2002), and current populations are estimated as fewer than 10,000 individuals and decreasing (BirdLife International 2000).

By the 1980s, the species was being extensively and unsustainably trapped for the cage-bird market (BirdLife International 2000) and was placed on CITES Appendix II in 1981. It was estimated that 74,509 individuals were exported from Indonesia between 1981 and 1990 (BirdLife International 2000). Imports from Indonesia between 1983 and 1988, as reported to CITES, averaged 9,571 per year (Marsden 1995, as cited in BirdLife International 2001), and allowing for unrecorded international trade, domestic trade, and mortality, it is estimated that at least 10,000 birds were being taken on Seram annually in the 1980s (Kinnaird *et al.* [in prep.], as cited in BirdLife International 2001). In October 1989, the salmon-crested cockatoo was transferred to CITES Appendix I. This listing resulted in a rapid drop to zero in officially traded birds, but the domestic consumption of the species remained high (BirdLife International 2001). Extrapolation from figures obtained by interviews in villages suggests that possibly thousands of birds (perhaps as many as 4,000, or 6.4 percent of the current estimated total) are still being captured each year (Kinnaird 1999, as cited in BirdLife International 2001). Forest loss, degradation, and fragmentation from timber extraction, settlement, and hydroelectric projects pose the other major threats. A program to raise local awareness, linked with the promotion of ecotourism, has recently been launched (BirdLife International 2000).

The salmon-crested cockatoo does not represent a monotypic genus. It faces threats that are high in magnitude and imminent, and therefore it receives a priority rank of 2.

Orange-fronted parakeet (*Cyanoramphus malherbi*)

The orange-fronted parakeet was treated as a species until it was first proposed as a color morph of *C. auriceps* in 1974 (Holyoak 1974, as cited in Snyder *et al.* 2000). However, recent

analysis has led to the suggestion that it should again be considered a distinct species (Triggs and Daugherty 1996). It is only known from two valleys on the South Island of New Zealand: the South Branch Hurunui River valley and the Hawdon River valley. Historically, it was once present on the North, most of the South, and Stewart Islands (BirdLife International 2000). This species is restricted to southern beech (*Nothofagus* spp.) forest (BirdLife International 2000), with a preference for areas bordering stands of mountain beech (*N. solandri*) (Snyder *et al.* 2000). It requires mature trees with natural hollows or cavities for nesting, and breeding of the species is linked with the irregular seed production by *Nothofagus* (BirdLife International 2000).

The orange-fronted parakeet has an extremely small population and limited range. There have only been a few sightings since 1966 (Triggs and Daugherty 1996), and previous assessments of its status have ranged from more common than originally thought (Harrison 1970) to close to extinction (Mills and Williams 1980). It is classified as Endangered in the 2002 IUCN Red List and is listed in Appendix II of CITES. The population is estimated at 200–500 individuals and declining (BirdLife International 2000). The primary cause of decline is likely to be predation by stoats (*Mustela erminea*) and rats (*Rattus* spp.) (BirdLife International 2000). Hybridization with yellow-crowned parakeets (*C. auriceps*) has been observed at Lake Sumner (Snyder *et al.* 2000). Existing captive stocks also show signs of interbreeding with *C. auriceps* and should not be considered for any conservation action in the future (Triggs and Daugherty 1996). Monitoring and conservation of this species is problematic given the difficulty in separating it from *C. auriceps* (BirdLife International 2000).

The orange-fronted parakeet does not represent a monotypic genus. It faces threats that are high but non-imminent. Therefore, it receives a priority rank of 5.

Uvea parakeet (*Eunymphicus uvaensis*; Previously Referred to as *Eunymphicus cornutus uvaeensis*)

The Uvea parakeet is restricted to Uvea, New Caledonia. It was recently split from the horned parakeet *E. cornutus* on the basis of morphological and biochemical differences (O. Robinet *in litt.* 1999, as cited in BirdLife International 2000). It is found primarily in forest habitat, notably, those dominated by *Agathis—Araucaria* and general woodlands, and feeds on the berries of vines and the flowers and seeds of various trees and shrubs (del Hoyo *et al.* 1997). It is restricted to areas of old-growth forest with nesting holes, but highest numbers occur close to gardens with papayas (BirdLife International 2000).

Early population estimates were alarmingly low for the Uvea parakeet, 70–90 birds and declining (Hahn 1993), but surveys yielded estimates of approximately 600 birds in 1993 and 750 birds in 1998 (P. Primot, *in litt.* 1999, as cited in BirdLife International 2000). It is classified as Endangered in the 2002 IUCN Red List because it occurs in a very small, declining area of forest on one small island (IUCN 2002). It was listed in Appendix I of CITES in July 2000, and had been previously listed in Appendix II. Habitat destruction in the last 30 years has caused a 30–50 percent decline in primary forest. Threats also include an ongoing illicit pet trade, mostly for the domestic market. Nesting holes are cut open to extract nestlings, which make them unsuitable for future breeding. The lack of nesting sites is believed to be a limiting factor for the species (BirdLife International 2000). Juveniles may be taken by predators such as the native brown goshawk (*Accipiter fasciatus*). Introductions to the adjacent island of Lifou in 1925 and 1963 failed (BirdLife International 2000), possibly due to the presence of ship and Norwegian rats (*Rattus norvegicus*) (Snyder *et al.* 2000).

A recovery plan for the Uvea parakeet was prepared for the period 1997–2002, which included strong local participation in population and habitat monitoring (Snyder *et al.* 2000). It is becoming well known and celebrated as an island emblem (Robinet and Salas 1997). Illegal trade is being successfully addressed by increased awareness and law enforcement. A captive-breeding program was initiated in 1998 to restock the south of Uvea. Measures are being taken to control predators and prevent colonization by rats (BirdLife International 2000). Current population numbers are increasing, but any relaxation of current conservation efforts or introduction of rats could lead to a rapid decline of the species (IUCN 2002).

The Uvea parakeet does not represent a monotypic genus. It faces threats that are moderate and imminent, and therefore receives a priority rank of 8.

Blue-throated macaw (*Ara glaucogularis*)

The blue-throated macaw is endemic to forest islands in the seasonally flooded Beni Lowlands (Lanos de Moxos) of Central Bolivia (Jordan and Munn 1993). It inhabits a mosaic of seasonally inundated savanna, palm-groves, forest islands, and possibly humid lowlands. This species is found in areas where there is an availability of palm-fruit food, especially *Attalea phalerata* (Hesse 1998, as cited in BirdLife International 2000). The region it inhabits lies at elevations between 200 and 250 m (BirdLife International 2000). The species has not been seen congregating in large flocks, and is most commonly seen traveling in pairs, and on rare occasions may be found in small flocks of up to five individuals (Collar *et al.* 1992). The blue-throated macaw nests between November and March in cavities within large trees where one to two young are raised (BirdLife International 2000).

The taxonomic status of this species was disputed for a long time, primarily because it was unknown in the wild to biologists until 1992 (del Hoyo *et al.* 1997). However, trappers apparently discovered these birds sometime in the late 1970s or early 1980s. Between the early 1980s and early 1990s, approximately 400–1,200 birds were exported from Bolivia, and many are now in captivity in the European Union and in North America (World Parrot Trust 2003). This species is severely threatened by past trapping for the national and international cage-bird trade. Recent estimates indicate that there are between 75 and 150 individuals in the wild (Snyder *et al.* 2000). It is categorized as Critically Endangered in the 2002 IUCN Red List and is listed in Appendix I of CITES. Trapping for the pet trade could still be a problem today, although some protection for known populations is in place. The Eco Bolivia Foundation patrols known populations by foot and motorbike, and the Armonia Association of Santa Cruz is searching the Beni for more populations. In addition, the Armonia Association is working on an awareness campaign aimed at the cattlemen's association to ensure that these birds are not hunted by trappers on their property (Snyder *et al.* 2000).

The blue-throated macaw does not represent a monotypic genus. It faces threats that are moderate and imminent, and therefore receives a priority rank of 8.

Southeastern rufous-vented ground cuckoo (*Neomorphus geoffroyi dulcis*)

The southeastern rufous-vented ground cuckoo is found in southeastern Brazil from Espirito Santo to Rio de Janeiro (del Hoyo *et al.* 1997). It is found in tropical lowland evergreen forests, where it feeds on large insects, scorpions, centipedes, spiders, small frogs, lizards, and occasionally seeds

and fruit (*ibid.*). The species is not globally threatened, although populations of ground cuckoos in southern Brazil appear to be under threat due to deforestation (*ibid.*). It is a rare, local, solitary species that requires large blocks of natural forest (*ibid.*). This extremely shy species is among the first to disappear if its primary forest habitat is disturbed, and in southeastern Brazil where it occurs, most of this type of forest has been destroyed (IUCN 1978–1979). It is poorly known, has a small range, and is highly sensitive to human disturbance (BirdLife International 2001). This subspecies is protected under Brazilian law (IUCN 1978–1979).

This is a subspecies facing threats that are high in magnitude and imminent. It therefore receives a priority rank of 3.

Margaretta's hermit (*Phaethornis malaris margarettae;* Previously Referred to as *Phaethornis margarettae*)

Margaretta's hermit was first described as a new species in 1972 by A. Ruschi (Sibley and Monroe 1990). It is currently treated as a subspecies of the great-billed hermit (*Phaethornis malaris*) (Sick 1993), which is not considered globally threatened. It is found in the understory of inundated lowland forest, secondary growth, bamboo thickets, and shrubbery. Margaretta's hermit is found in coastal East Brazil and is limited to forest remnants; consequently, it could be threatened by further habitat destruction (del Hoyo *et al.* 1999). The Margaretta's hermit is listed in Appendix II of CITES.

Margaretta's hermit is a subspecies facing threats that are high and imminent. Therefore, it receives a priority rank of 3.

Black-breasted puffleg (*Eriocnemis nigrivestis*)

The black-breasted puffleg is possibly now confined to the northern ridge crests of Volcan Pichincha, in Pichincha Province, northwest Ecuador (BirdLife International 2000). It may also occur on Volcan Atacazo, although there have only been three specimens found in 1898, with a possible sighting in 1983 in this location (Collar *et al.* 1992). It occurs in dwarf, humid elfin forest and paramo, at 3,100–4,500 m, from November through January and in humid temperate forest at about 2,400 m at other times of the year (Philips 1989).

There are a large number of museum specimens (over 100) for this species, suggesting it was more common in the past (*ibid.*). The only confirmed record between 1950 and 1993 was three individuals in 1980 (BirdLife International 2000). Recent fieldwork targeting the species has produced more records, but it has clearly declined and is now rare within a very limited range (Philips 1989). The population estimate for this species is 50–249 birds, with a decreasing population trend (BirdLife International 2000). This species is classified as Critically Endangered in the 2002 IUCN Red List and is listed in Appendix II of CITES. It qualifies as critical because it has an extremely small range and the population is restricted to one location where habitat is being rapidly converted and there is ongoing volcanic activity (BirdLife International 2000). The main threat to the species is the taking of trees in the elfin forest for charcoal, although media coverage of the species has encouraged authorities to control access and forbid charcoal production (Philips 1989). In addition, until recently, potato cultivation and livestock grazing on ridge crests were causing suitable habitat in these areas to disappear rapidly (*ibid.*). Some of these ridges are almost completely devoid of natural vegetation, and even if black-breasted pufflegs still occur in these areas, they are most likely not numerous (BirdLife International 2000).

The black-breasted puffleg does not represent a monotypic genus. The threat to the species is high and imminent. Therefore, it receives a priority rank of 2.

Chilean woodstar (*Eulidia yarrellii*)

The Chilean woodstar is restricted to a very small area on the Pacific coast from Tacna, Peru, to extreme northern Antofagasta, Chile (Collar *et al.*, 1992). It is only known to regularly breed in the Lluta and Azapa valleys, Arica Department, in extreme northern Chile (BirdLife International 2000). It inhabits desert river valleys and gardens, mainly from sea level to about 750 m and was found once at 2,600 m (Collar *et al.*, 1992). It is usually a solitary feeder and has been reported feeding in gardens on *Lantana* and *Hibiscus* flowers (Collar *et al.* 1992), but it is comparatively rare in such habitats (Howell and Webb in prep., as cited in BirdLife International 2000).

The Chilean woodstar was reported to be common at the beginning of the 20th Century (Collar *et al.* 1992). More recently, surveys have found this species to be scarce to locally common (Howell and Webb in prep., as cited in BirdLife International 2000). It is unclear whether this represents a serious decline or previous observers did not come across flowering trees favored by this species (BirdLife International 2000). The population estimate for this species is 2,500–10,000 birds with a decreasing population trend (BirdLife International 2000). This species is classified as Endangered in the 2002 IUCN Red List. It has a very small range, with all populations confined to remnant habitat patches in the two desert valleys where it occurs, which are heavily cultivated (IUCN 2002). The indigenous plants favored by the Chilean woodstar may be severely threatened by this cultivation (Collar *et al.* 1992). The extent, area, and quality of suitable habitat are likely to be declining (*ibid.*). The Chilean woodstar is listed in Appendix II of CITES. All exports of hummingbirds from Peru and Chile are controlled (BirdLife International 2000).

The Chilean woodstar represents a monotypic genus. It faces threats that are high in magnitude and non-imminent. It therefore receives a rank of 4.

Esmeraldas woodstar (*Acestrura berlepschi*)

The Esmeraldas woodstar is restricted to a small area on the Pacific Slope of the Andes of western Equador (Esmeraldas, Manabi, and Guayas), where it is very rare and localized (BirdLife International 2000). It is found in lowland, moist forest (del Hoyo *et al.* 1999). It has also been recorded in the canopy of semi-humid secondary growth at 50'150 m in December–March, when it apparently breeds (Becker *et al.* 2000). However, it has not been recorded in this habitat at other times of year, and there is no evidence concerning its long-term ability to survive in this type of forest (BirdLife International 2000).

The Esmeraldas woodstar inhabits one of the most threatened forest habitats within the Neotropics (del Hoyo *et al.* 1999). All forest types within its range have greatly diminished due to logging and clearing for agriculture (Dodson and Gentry 1991, as cited in BirdLife International 2000). This species is classified as Endangered in the 2002 IUCN Red List because it has a very small and severely fragmented range, which is experiencing rapid declines, presumably causing declines in the bird's population (IUCN 2002). The species is also listed in Appendix II of CITES. The population estimate for this species is 1,000–2,499 birds with a decreasing population trend (BirdLife International 2000). There is a serious current threat from persistent grazing by goats and cattle, which damage the understory and prevent regeneration (Dodson and Gentry 1991, as cited in BirdLife International 2000). Dodson and Gentry (1991) indicate that rapid habitat loss continues, at least in

unprotected areas, and extant forests will soon be removed. In Manabi Province, the Esmeraldas woodstar occurs in Machalilla National Park (Collar *et al.* 1992), but even here, it receives inadequate protection (BirdLife International 2000).

The Esmeraldas woodstar does not represent a monotypic genus; however, it faces threats that are high in magnitude and imminent. Therefore, it receives a priority rank of 2.

Helmeted woodpecker (*Dryocopus galeatus*)

The helmeted woodpecker is endemic to the southern Atlantic forest region of southeastern Brazil, eastern Paraguay, and northeastern Argentina (BirdLife International 2001). It is found in tall lowland and montane primary forest, in forest that has been selectively logged, and usually near large tracts of intact forest (ibid.). This woodpecker feeds on beetle larvae living beneath bark and forages primarily in the middle story of the forest interior (del Hoyo *et al.* 2002).

Recent field work on the helmeted woodpecker has revealed that the species is less rare than once thought (BirdLife International 2000). It is listed as Vulnerable in the IUCN 2002 Red List. The current population is estimated at no more than 10,000 individuals and decreasing (BirdLife International 2000). The greatest threat to this species is widespread deforestation. Numerous sightings since the mid-1980s has included a pair in the Brazilian State of Santa Catarina in 1998, where the species had not been seen since 1946 (del Hoyo *et al.* 2002). The helmeted woodpecker is protected by Brazilian law and populations occur in numerous protected areas throughout its range (BirdLife International 2000). Further studies are needed to clarify its distribution and status (del Hoyo *et al.* 2002).

The helmeted woodpecker does not represent a monotypic genus. The magnitude of threat to the species is moderate and imminent. It therefore receives a priority rank of 8.

Okinawa woodpecker (*Sapheopipo noguchii*)

The Okinawa woodpecker is endemic to Okinawa Island, Japan, in the Nansei Shoto (Ryukyu) Islands in southern Japan. It is confined to Kunigami-gun, with its main breeding areas along the mountain ridges between Mt. Nishime-take and Mt. Iyu-take (BirdLife International 2000). This species is found in mature, subtropical moist evergreen broadleaf forests, much of which is now confined to hilltops (Brazil 1991). It is found in forests that are at least 30 years old (Ikehara 1988) in trees more than 20 cm in diameter (Research Center, Wild Bird Society of Japan 1993, as cited in BirdLife International 2001). The Okinawa woodpecker heavily uses rotting stubs as food sources, which suggests a dependence on old-growth forests with large, often moribund trees, accumulated fallen trees and debris, and undergrowth (Short 1993, as cited in BirdLife International 2001). This woodpecker mainly nests in the tree *Castanopsis cuspidata* (Research Center, Wild Bird Society of Japan 1993, as cited in BirdLife International 2001). It feeds on large arthropods, notably beetle larvae, spiders, moths, and centipedes, plus fruit, berries, seeds, acorns, and other nuts (Winkler *et al.* 1995).

The Okinawa woodpecker is considered the world's rarest extant picid and is categorized as Critically Endangered in the 2002 IUCN Red List. It was considered close to extinction in the 1930s, and in the early 1990s, the breeding population was estimated to be about 75 birds, with the total population between 146 and 584 individuals. It has a single tiny, declining population, which is threatened by continued loss of mature forest to logging, dam construction, agriculture, and golf course developments (BirdLife International 2000). Some conservation efforts are underway. Currently, it is legally protected in Japan. The Yambaru, a forest area in the Okinawa Prefecture, was designated as a national park in 1996, and conservation organizations have purchased sites where the woodpecker occurs to establish private wildlife preserves (del Hoyo *et al.* 2002).

The Okinawa woodpecker represents a monotypic genus. This species faces threats that are moderate in magnitude and imminent. It therefore receives a priority rank of 7.

Yellow-browed toucanet (*Aulacorhynchus huallagae*)

The yellow-browed toucanet is known from only two localities in north-central Peru, La Libertad, where it is uncommon, and Rio Abiseo National Park, San Martin, where it is apparently very rare (BirdLife International 2000). It has a narrow elevational distribution, inhabiting the canopy of montane wet cloud forests with mosses and epiphytes between 2,125 and 2,510 m (del Hoyo *et al.* 2002, Collar *et al.* 1992). This distribution may be related to the occurrence of the larger grey-breasted mountain toucan (*Andigena hypoglauca*) above 2,300 m and the occurrence of the emerald toucanet (*Aulacorhynchus prasinus*) below 2,100 m (Schulenberg and Parker, as cited in Collar *et al.* 1992). However, its restricted range remains unexplained (*ibid.*). The yellow-browed toucanet does not appear to occupy all apparently suitable forest available within its overall range (Schulenberg and Parker 1997). Deforestation has been widespread in this region, but largely below this species' altitudinal range (BirdLife International 2000). However, coca growers have taken over forests within its altitudinal range, probably resulting in some reductions in this species range and population (ibid.). It is listed as Endangered by the IUCN because of its very small range (IUCN 2002). Current population size is unknown (BirdLife International 2000).

The yellow-browed toucanet does not represent a monotypic genus. The magnitude of threat to the species is moderate and non-imminent. Therefore, it receives a priority rank of 11.

Royal cinclodes (*Cinclodes aricomae*)

The royal cinclodes occurs in the Andes of southeastern Peru (Cuzco, Apurimac, and Puno) and adjacent Bolivia (La Paz) (BirdLife International 2000). It is found in tiny humid patches of *Polylepis* woodland and montane scrub, mainly at 3,500–4,800 m (Parker *et al.* 1996). This species is classified as Critically Endangered in the 2002 IUCN Red List because it has an extremely small population that is restricted to a severely fragmented and rapidly declining habitat (IUCN 2002). In addition, no sub-population is thought to exceed 50 mature individuals (*ibid.*). The population estimate for this species is 50–249 birds, with a decreasing population trend (BirdLife International 2000). The main threat is the inability of *Polylepis* to regenerate due to the uncontrolled use of fire and heavy grazing (Fjeldsa and Kessler 1996, as cited in BirdLife International 2000). Cutting for timber, firewood, and charcoal, although locally destructive, could be sustainable if regeneration was allowed to occur (*ibid.*). A local program aimed at educating families on *Polylepis* woodland and its birds seems to be working.

The royal cinclodes does not represent a monotypic genus. The magnitude of threat to the species is high and the immediacy is imminent. We therefore have assigned a priority rank of 2 to this species.

White-browed tit-spinetail (*Leptasthenura xenothorax*)

The white-browed tit-spinetail is restricted to a severely fragmented range in south-central Peru in the Runtacocha highland (Apurimac), the Nevado

Sacsarayoc Massif, and the Cordillera Vilcanota (Cuzco) (BirdLife International 2000). These birds occur in small, widely scattered patches of humid *Polylepis* woodlands at 3,700–4,550 m (*ibid.*). The white-browed tit-spinetail is categorized as Endangered in the 2002 IUCN Red List because of its extremely small and fragmented range and population, which continue to decline due to habitat loss and a lack of habitat regeneration (IUCN 2002). The population is estimated at 250–999 individuals and declining (BirdLife International 2000). Regeneration of *Polylepis* woodlands is prevented by uncontrolled fires, heavy grazing, and the inadequacy of afforestation projects, which are the greatest threats to the white-browed tit-spinetail (Fjeldsa and Kessler 1996, as cited in BirdLife International 2000). Although cutting for timber, firewood, and charcoal is locally destructive, it could be sustained if regeneration were allowed to occur. There have been attempts to draw local attention to the plight of *Polylepis* woodlands in Cuzco, which may lead to better environmental controls (*ibid.*).

The white-browed tit-spinetail does not represent a monotypic genus. The magnitude of threat to this species is high and immediacy of threat is imminent. It has therefore received a priority rank of 2.

Black-hooded antwren (*Formicivora erythronotos,* Previously Referred to as *Myrmotherula erythronotos*)

The black-hooded antwren is endemic to southeast Brazil and survives in a narrow coastal strip around the Baía Ilha Grande in south Rio de Janeiro, Brazil (BirdLife International 2000; BirdLife International 2001). It has been found to occur mostly in the lush understory of modified restinga, early successional habitats such as secondary growth, and the understory of old secondary growth (BirdLife International 2000). This species was originally known from about twenty 19th Century skins, and thought to be extinct until it was rediscovered in 1987 (BirdLife International 2000). It has been classified as Endangered by IUCN (2002). Although the species is found at high densities at three sites, the overall range is very small and highly fragmented, and the species is likely to be declining rapidly in response to habitat loss (BirdLife International 2000). The population estimate for this species is 1,000–2,499 birds with a decreasing population trend (BirdLife International 2000). This species is threatened by development of the narrow coastal plain for tourism and beachside housing and widespread clearance of suitable habitat for pasture and plantations of *Euterpe* sp. palms (*ibid.*).

The black-hooded antwren does not represent a monotypic genus. It faces threats that are high in magnitude and imminent, and therefore it receives a priority rank of 2.

Fringe-backed fire-eye (*Pyriglena atra*)

The fringe-backed fire-eye is known only from a very restricted area in the vicinity of Salvador, coastal Bahia, and in south Sergipe, Brazil (Collar *et al.* 1992). It is found in the tangled undergrowth of lowland forests and appears to favor secondary growth and other semi-open habitats where horizontal perches can be found near the ground. Recent population estimates indicate that between 250 and 999 individuals remain in the wild, and the population is declining (BirdLife International 2000). The species is categorized as Critically Endangered in the 2002 IUCN Red List because of its extremely small range and declining habitat, and because it is known from a very few, highly fragmented localities (IUCN 2002). The fringe-backed fire-eye is protected under Brazilian law. The greatest threat to this species is habitat loss (BirdLife International 2000).

This species does not represent a monotypic genus. It faces threats that are high in magnitude and imminent. It therefore receives a priority rank of 2.

Brown-banded antpitta (Grallaria milleri)

The brown-banded antpitta is endemic to the Volcan Ruiz–Tolima Massif of the central Andes, Colombia (BirdLife International 2000). In Ucumari, this species has been recorded in three types of habitat with no significant difference in population: Early secondary growth vegetation with a high density of herbs and shrubs; the understory of 30-year-old alder (*Alnus*) plantations; and the understory of 30-year-old secondary forest (Kattan and Beltran 1997). Between 1911 and 1942, ten specimens were collected at elevations of 2,745–3,140 m in Caldas and Quindio (BirdLife International 2000; Kattan and Beltran 1997). It was not seen again until May 1994 in Ucumari Regional Park in Risaralda (Kattan and Beltran 1997). Eleven more birds were caught and banded during surveys conducted between 1994 and 1997 in a narrow elevational band of 2,400–2,600 m, and it was estimated that 106 individuals were present in a 0.63-km^2 area (*ibid.*, Kattan and Beltran 1999). During 1994–1997, additional observations of the bird were made on the southeast slope of Volcan Tolima in the Rio Toche Valley, which represents a range extension (Lopez-Lanus *et al.* 2000).

The greatest threat to the brown-banded antpitta is habitat loss. In the Rio Toche Valley, forest has been converted to agriculture since the 1950s, and natural vegetation cover has been reduced to about 15 percent between 1,900 and 3,200 m (BirdLife International 2000). This species is classified as Endangered in the 2002 IUCN Red List because it is known from very few locations in a very small range (IUCN 2002). In addition, habitat loss and degradation are continuing within this range (*ibid.*). The population estimate for this species is 250–999 birds, with a decreasing population trend (BirdLife International 2000). Significant numbers of this species are well protected in Ucumari Regional Park, Risaralda (Kattan and Beltran 1997). The Rio Toche watershed lacks any form of protection, and the limited remaining forest there continues to diminish and become increasingly fragmented (Lopez-Lanus *et al.* 2000).

The brown-banded antpitta does not represent a monotypic genus. The threat to the species is high in magnitude and imminent. It therefore receives a priority rank of 2.

Brasilia tapaculo (*Scytalopus novacapitalis*)

The Brasilia tapaculo occurs in the undergrowth of swampy gallery forest and dense streamside vegetation with impenetrable secondary growths of fern *Pteridium aquilinum* from Goias, the Federal District, and Minas Gerais, Brázil (Collar *et al.* 1992; BirdLife International 2000, Negret and Cavalcanti 1985, as cited in Collar *et al.* 1992). Although the species was once considered rare (Sick and Texeira 1979, as cited in Collar *et al.* 1992), it is found in reasonable numbers in certain areas of Brasilia (D. M. Teixeira, *in litt.* 1987, as cited in Collar *et al.* 1992). The population is estimated at more than 10,000 birds, with a decreasing population trend (BirdLife International 2000). Currently, the IUCN Red List categorizes *Scytalopus novacapitalis* as Lower Risk/near threatened (IUCN 2002). This species has a very limited range and is presumably losing habitat around Brasilia. However, its distribution now seems larger than initially thought, and the swampy gallery forests where it is found have escaped clearance (D. M. Teixeira *in litt.* 1987, as cited in Collar *et al.* 1992). The Brasilia tapaculo is currently protected by Brazilian law (Bernardes *et al.* 1990, as cited in Collar *et al.* 1992), and it is known from six protected areas

(BirdLife International 2000). Annual burning of adjacent grasslands limits the extent and availability of suitable habitat, as does wetland drainage and the sequestration of water for irrigation (BirdLife International 2000).

The Brasilia tapaculo does not represent a monotypic genus. The magnitude of threat to the species is moderate and imminent. Therefore, it receives a priority rank of 8.

Kaempfer's tody-tyrant (*Hemitriccus kaempferi*; Previously Referred to as *Idioptilon kaempferi*)

The Kaempfer's tody-tyrant is known from three localities in Santa Catarina, Brazil: one record each in 1929, 1950, and 1998 (BirdLife International 2000). It is found in humid lowland Atlantic forest. At one of these localities, at Salto do Pirai, these birds have typically been seen in forest edge, well-shaded secondary growth, and sections of low, generally epiphyte-laden open woodland in the vicinity of watercourses (Mazar Barnett *et al.* [in press], as cited by BirdLife International 2000). It feeds predominantly in the midstory of medium-sized trees, and pairs appear to remain within small well-defined areas (*ibid.*). The Kaempfer's tody-tyrant is categorized as Endangered in the 2002 IUCN Red List because of its extremely small range, with only two recent records in a single area (IUCN 2002). The population estimate is 1,000–2,499 individuals and declining (BirdLife International 2000). There has been extensive deforestation in the Atlantic forest, and much of the lowland forest continues to be cleared in the vicinity of the two most recent sightings (BirdLife International 2000). The Kaempfer's tody-tyrant is protected by Brazilian law and occurs in one protected area (*ibid.*).

This species does not represent a monotypic genus. Threats to the species are high in magnitude and imminent. We therefore have assigned a priority rank of 2 to this species.

Ash-breasted tit-tyrant (*Anairetes alpinus*)

The ash-breasted tit-tyrant is confined to semi-humid *Polylepis—Gynoxys* woodlands in the high Andes in Peru and Bolivia (BirdLife International 2000). There are two widely disjunct populations: the subspecies *A. a. alpinus* occurs in the Cordilleras Central and Occidental, Peru, and *A. a. bolivianus* occurs in the Cordillera Oriental, Peru, and in the Cordillera Real, Bolivia (BirdLife International 2000; Collar *et al.* 1992; Fjeldsa and Kessler 1996). It is relatively common in the Runtacocha highland, Apurimac, and the Cordillera Vilcabamba, Cuzco (Fjeldsa and Kessler 1996). The ash-breasted tit-tyrant is categorized as Endangered in the 2002 IUCN Red List because of its very small, fragmented, and declining occupied range and population (IUCN 2002). The population is estimated at 250–999 individuals and declining (BirdLife International 2000). Heavy grazing is the main threat, especially in Ancash, which, combined with the uncontrolled use of fire, prevents *Polylepis* regeneration (Fjeldsa and Kessler 1996 and G. Servat (*in litt.*), as cited in BirdLife International 2000). In addition, a change from camelid to sheep and cattle farming, erosion, and soil degradation caused by agricultural intensification and afforestation are contributory factors to the decline of the species (Fjeldsa and Kessler 1996). There have been some local successes with public awareness campaigns in Cuzco, Peru (*ibid.*).

The ash-breasted tit-tyrant does not represent a monotypic genus. The threat to the species is high in magnitude and imminent. Therefore, we have assigned it a priority rank of 2.

Peruvian plantcutter (*Phytotoma raimondii*)

The Peruvian plantcutter inhabits the coastal region of northern Peru from Tumbus to Lima (BirdLife International 2000). Recent records are from only four areas, and it is absent from much apparently suitable habitat (*ibid.*). It occurs in desert scrub, riparian thicket, and low woodland, usually dominated by *Prosopis* trees with some *Acacia* up to 550 m (*ibid.*). The Peruvian plantcutter is categorized as Endangered in the 2002 IUCN Red List because of its extremely small and fragmented range, and because the remaining habitat is subject to rapid and continuing destruction and degradation (IUCN 2002). The population is estimated at 250–999 individuals and declining (BirdLife International 2000). Threats include the conversion of coastal river valleys to cultivation, removal of the shrub layer by grazing goats, and burning and logging for firewood and charcoal (Engblom *in litt.*, as cited by BirdLife International 2000).

The Peruvian plantcutter does not represent a monotypic genus. Threats to the species are high in magnitude and imminent. Therefore, it receives a priority rank of 2.

St. Lucia forest thrush (*Cichlherminia iherminieri sanctaeluciae*)

The St. Lucia forest thrush is found on St. Lucia Island in the West Indies (Raffaele *et al.* 1998). It mostly inhabits the undergrowth of mid- and high-altitude primary and secondary moist forest (Raffaele *et al.* 1998; Keith 1997, as cited in BirdLife International 2000). On St. Lucia, it is uncommon to rare, but was considered numerous in the late 19th Century (Keith 1997, as cited in BirdLife International 2000). It is currently treated as a subspecies of the forest thrush (*Cichlherminia lherminieri*), which is classified as Vulnerable in the 2002 IUCN Red List because of human-induced deforestation and introduced predators (IUCN 2002). Habitat loss has occurred throughout the species' range, and other threats include competition with the bare-eyed robin, brood parasitism by the shiny cowbird, hunting by humans for food, and predation by mongooses and other introduced predators (Raffaele *et al.* 1998).

This subspecies faces threats that are high and imminent. It therefore receives a priority rank of 3.

Eiao Polynesian warbler (*Acrocephalus caffer aquilonis*)

The Eiao Polynesian warbler is restricted to dry forest on Eiao Island in the Marquesas Islands. Decker (1973) found that other races of the species occupy a variety of habitats possessing trees or tall bushes, ranging from cultivated areas to dense forests. On Eiao, by 1960, only scraps of woodland remained, and after many years of grazing by introduced sheep and swine, it was described as being a barren desert of rock and orange clay. This warbler was apparently common in 1922, when the Whitney South Sea Expedition collected a number of specimens (Holyoak 1975, as cited by IUCN 1978–1979). Three more individuals were collected in 2 days in 1929, and it was still present in small numbers in 1968 (*ibid.*). The population in 1987 was estimated at 100–200 individuals (Thibault, personal communication to Philippe Raust, Sociéétéé d'Ornithologie de Polynéésie 2003). Threats include alien invasive mammals and predators and a lack of regeneration of habitat (*ibid.*).

The Eiao Polynesian warbler is a subspecies facing threats that are high in magnitude and imminent. It therefore receives a priority rank of 3.

Codfish Island fernbird (*Bowdleria punctata wilsoni*)

The Codfish Island fernbird is found only in low scrub habitat on Codfish Island, off the northwest coast of Stewart Island, New Zealand (IUCN 1979). The vegetation of Codfish Island has been modified by the introduced Australian brush-tailed possum

(*Trichosurus vulpecula*), and fernbird numbers have been reduced by predation by the weka (*Gallirallus australis scotti*) and the Polynesian rat (*Rattus exulans*) (Merton 1974, personal communication, as cited in IUCN 1979). In 1966, this fernbird was considered relatively safe (Blackburn 1967, as cited in IUCN 1979), but estimates from 1975 indicated a gradually declining population numbering approximately 100 individuals (Bell 1975, as cited in IUCN 1979). At that time, it was absent from parts of Codfish Island that it had formerly occupied (Blackburn 1967, as cited in IUCN 1979). Several conservation measures have been completed on Codfish Island. The weka was eradicated from Codfish Island between 1980 and 1985 (Taylor 2000), and Polynesian rats were eradicated from Codfish Island in August 1998 (Conservation News 2002). The fernbirds are now rebounding strongly on the island (Hayley Meehan, New Zealand Forest and Birds, personal communication, 2003).

The Codfish Island fernbird is a subspecies that is now facing threats that are low to moderate in magnitude and imminent. It therefore receives a priority rank of 9.

Ghizo white-eye (*Zosterops luteirostris*)

The Ghizo white-eye is endemic to Ghizo in the Solomon Islands (BirdLife International 2000). Birds are locally common in the remaining tall or old-growth forests located on Ghizo (Buckingham *et al.* 1995 and Gibbs 1996, as cited in BirdLife International 2000). It is less common in scrub close to large trees and in plantations (BirdLife International 2000), and it is not known whether these two habitats support sustainable breeding populations (Buckingham *et al.* 1995, as cited in BirdLife International 2000). This species is classified as Endangered in the 2002 IUCN Red List because of its small population that is inferred to be declining because of habitat loss (IUCN 2002). The population estimate for this species is 250–999 birds with a decreasing population trend (BirdLife International 2000). The very tall old-growth forest on Ghizo is still under some threat from clearance for timber for local use, firewood, and gardens, and the areas of other secondary growth, which are sub-optimal habitats for this species, are under considerable threat from clearance for agricultural land (*ibid.*).

The Ghizo white-eye does not represent a monotypic genus. It faces threats that are moderate and imminent, and therefore receives a priority rank of 8.

Medium tree-finch (*Camarhynchus pauper*)

The medium tree-finch is endemic to Floreana in the Galapagos Islands, Ecuador (BirdLife International 2000). It is common in the highlands and considered uncommon to rare on the coast (Harris 1992). It is found in montane evergreen and tropical deciduous forest, the *Scalesia* zone, and humid scrub (Stotz *et al.* 1996). This poorly known species is considered Vulnerable by the IUCN because it has a very small range (IUCN 2002). The population estimate ranges from 1,000 to 2,499 (BirdLife International 2000). Introduced species may be a threat because Floreana Island has a number of introduced predators and herbivores, including cattle, pigs, cats, dogs, and rats, and also suffers from extensive habitat destruction and degradation (Jackson 1985). However, it is not known how any of these potential threats affects the species (BirdLife International 2000). Population trends for this species are also unknown (IUCN 2002). Predator control is occurring on Floreana, Santa Cruz, and Santiago Islands (H. Vargus and F. Cruz (*in litt.*) 2000, as cited in BirdLife International 2000). The Galapagos Islands are a national park and were declared a World Heritage Site in 1979 (BirdLife International 2000).

The medium tree-finch does not represent a monotypic genus. The magnitude of threat to the species is moderate and immediacy is non-imminent. We therefore give this species a priority rank of 11.

Cherry-throated tanager (*Nemosia rourei*)

The cherry-throated tanager is currently known from Fazenda Pindobas IV in Espirito Santo, Brazil, where small numbers have been recorded since 1998 (Bauer *et al.* 2000). Prior to this time, this species was only known from one type specimen, collected around the mid-19th Century at Muriae, Minas Gerais, and from a flock of eight individuals seen in the region of Jatiboca, Espirito Santo, in 1941 (Collar *et al.* 1992). The area of Espirito Santo is now devoid of forest (BirdLife International 2000). There have been probable sightings at the Augusto Ruschi (Nova Lombardia) Biological Reserve in 1992 (Scott 1997) and Fazenda Pedra Bonita, Minas Gerais (Bauer *et al.* 2000). It occurs primarily in the canopy of humid montane forests at elevations of 900–1,100 m (*ibid.*). The cherry-throated tanager is categorized as Critically Endangered in the 2002 IUCN Red List because of its extremely small range and because the population is only found in a single area (IUCN 2002). The population is estimated at 50–249 individuals and declining (BirdLife International 2000). It is believed that extensive deforestation has had an adverse impact on this tanager (*ibid.*). This species is protected by Brazilian law and its conceivable range may include protected areas (*ibid.*). The owners of Fazenda Pindobas IV have expressed interest in protecting the remaining native forest on their property (Venturini, *in litt.* 2000, as cited in BirdLife International 2000).

The cherry-throated tanager does not represent a monotypic genus. It faces threats that are high in magnitude and imminent, and therefore it receives a priority rank of 2.

Black-backed tanager (*Tangara peruviana*)

The black-backed tanager is endemic to the coastal Atlantic forest region of southeastern Brazil, with records from Rio de Janeiro, Sao Paolo, Parana, Santa Catarina, Rio Grande do Sul, and Espirito Santo (BirdLife International 1992; Argel-de-Oliveira, *in litt.* 2000, as cited in BirdLife International 2000). It is largely restricted to coastal sand-plain forest and littoral scrub, also called restinga, and has also been found in secondary forests (BirdLife International 1992). The black-backed tanager is generally not considered rare within suitable habitat (BirdLife International 2000). It has a complex distribution with periodic local fluctuations in numbers owing to seasonal movements, at least in Rio de Janeiro and Sao Paolo (BirdLife International 1992). Clarification of these seasonal movements will provide an improved understanding of its actual conservation status (IUCN 2002). Population estimates range from 2,500 to 10,000 individuals (BirdLife International 2000), and it is considered Vulnerable by the IUCN. Currently populations appear to be small and fragmented. The species is threatened by the rapid and widespread loss of restinga and occasionally appears in the illegal cage-bird trade (BirdLife International 2000).

The black-backed tanager does not represent a monotypic genus. The threat to the species is low to moderate in magnitude, and the threat is non-imminent. Therefore, we give this species a priority rank of 11.

Lord Howe pied currawong (*Strepera graculina crissalis*)

The Lord Howe Island subspecies of the pied currawong is endemic to the Lord Howe Island group in New South Wales, Australia. The highest densities

of nests are located on the slopes of Mt. Gower and in the Erskine Valley, with smaller numbers on the lower land to the north (Knight 1987, as cited in Garnett and Gabriel 2000). This subspecies is highly mobile, and individuals can be found anywhere on the island as well as on offshore islands, such as the Admiralty group (Garnett and Gabriel 2000). Territories of the pied currawongs include a section of stream or gully that is lined by tall timber (*ibid.*). They feed on dead rats, possibly chase and kill live ones, and have also been recorded taking seabird chicks, poultry, and the chicks of the Lord Howe woodhen (*Tricholimnas sylvestris*) and white terns (*Gygis alba*), as well as fruits and seeds (Hutton 1991 and McFarland 1994, as cited Garnett and Gabriel 2000). Local residents sometimes kill currawongs that have attacked poultry, woodhens, or terns (Garnett and Gabriel 2000). However, the effect of this killing on the overall population is unknown (*ibid.*). The Lord Howe pied currawong is listed as Endangered on the schedules of the New South Wales Threatened Species Conservation Act (Garnett and Gabriel 2000) because the subspecies is limited in range, only occurring on Lord Howe Island (New South Wales National Parks and Wildlife Service 2003). In the Action Plan for Australian Birds (2000), the current population is estimated at approximately 80 mature individuals. The agency responsible for the conservation of this species is the New South Wales National Parks and Wildlife Service.

The Lord Howe pied currawong is a subspecies facing threats that are low in magnitude and non-imminent. Therefore, it receives a priority rank of 12.

Findings on Species for Which Listing Is Warranted

We will promptly prepare listing proposals for five of the species: The giant ibis (*Pseudibis gigantean*), black stilt (*Himantopus novaezelandiae*), Gurney's pitta (*Pitta gurneyi*), Socorro mockingbird (*Mimodes graysoni*), and caerulean paradise-flycatcher (*Eutrichomyias rowleyi*).

Giant ibis (*Pseudibis gigantea*)

The giant ibis has undergone a massive reduction in range and is currently confined to open deciduous forest in extreme southern Laos and a larger area of northern and eastern Cambodia (BirdLife International 2001). It is still fairly widespread but extremely rare, with only a few birds surviving in southern Laos (BirdLife International 2000). Its historical range spanned central and peninsular Thailand, central and northern Cambodia, southern and central Laos, and southern Viet Nam (King *et al.* 1975, as cited in N.J. Collar *et al.* 1994). The giant ibis is now considered extinct in Viet Nam and Thailand (BirdLife International 2000). It seems always to have been uncommon and local throughout its range (del Hoyo *et al.* 1992). The giant ibis is a lowland bird, found in both open and forested wetland habitats (N.J. Collar *et al.* 1994).

The giant ibis is categorized as Critically Endangered by the IUCN (IUCN 2002). In 1997, its population was estimated at about 250 birds, but this is probably too high and the population is very likely to be fewer than 50 mature individuals (BirdLife International 2000). The loss of wetlands is probably one of the main causes of decline, and the conversion for agriculture of the central valley of Chao Phraya is thought to have been instrumental in its extirpation from Thailand. The large size of the giant ibis probably makes it vulnerable to hunting (del Hoyo *et al.* 1992). Currently, the giant ibis is depicted in public awareness material in Laos and Cambodia as part of an ongoing campaign to reduce hunting of large waterbirds (BirdLife International 2000).

The giant ibis does not represent a monotypic genus. The magnitude of threat to the species is high, and the immediacy of threat is imminent. We therefore give this species a priority rank of 2.

Black stilt (*Himantopus novaezelandiae*)

The black stilt was formerly widespread across New Zealand (del Hoyo *et al.* 1996). Currently, breeding is restricted to the Upper Waitaki Valley, South Island, and small numbers of the species overwinter on North Island (BirdLife International 2000). It is found along riverbanks, lake shores, swamps, and shallow ponds. The black stilt is carnivorous, taking a variety of invertebrates and small fish (del Hoyo *et al.* 1996). Most individuals breed for the first time at 3 years of age. The species typically lays four eggs per clutch and will usually re-nest if the first clutch is lost early in the season (BirdLife International 2000).

The total population of black stilts crashed from 1,000 birds or more in 1950 to fewer than 100 birds in 1960 (del Hoyo *et al.* 1996). The current population estimate for the black stilt is 40 individuals and decreasing (BirdLife International 2000). It is considered Critically Endangered by the IUCN because it has declined recently to an effective population size of 18 breeding birds and is considered one of the most threatened shorebirds in the world (IUCN 2000). This species suffers from heavy predation, primarily from introduced animals such as cats, ferrets (*Mustelo furo*), stoats (*M. Erminea*), hedgehogs, brown rats (*Rattus norvegicus*), the native Australian harrier (*Circus approximans*), and kelp gull (*Larus dominicanus*) (BirdLife International 2001). For nesting, the black stilt prefers dry banks where both cats and ferrets hunt (Pierce 1986, as cited in Collar *et al.* 1994). They are solitary nesters, have a long fledgling period, and exhibit ineffective anti-predator behavior, which all contribute to heavy losses from predation (del Hoyo *et al.* 1996). Nesting areas have also been destroyed by drainage, weed growth, and hydroelectric development (Collar *et al.* 1994). There is also interbreeding with the black-winged stilt (*H. himantopus*) as the population size decreases (del Hoyo *et al.* 1996). The black stilt has been prevented from becoming extinct in the wild by the annual release of substantial numbers of captive-bred birds and through predator control (BirdLife International 2000).

There are a number of conservation efforts under way for the black stilt. Predator control and captive rearing and release began in the early 1980s with mixed success (del Hoyo *et al.* 1996). Recent advances in release methods appear to have enhanced the initial survival of released birds from 20–45 to 80–100 percent (Chambers and MacAvoy 1999, as cited in BirdLife International 2000). Trapping for predators around all wild nests has been ongoing since 1997 (Maloney *in litt.* 1999, as cited in BirdLife International 2000). Water levels are being manipulated in managed wetlands where predators are controlled to attract birds to feed and possibly breed (Dowding and Murphy (in press), as cited in BirdLife International 2000).

The black stilt does not represent a monotypic genus, but the magnitude of threat is high, and the immediacy of threat is imminent. We therefore assign this species a priority rank of 2.

Gurney's pitta (*Pitta gurneyi*)

Historically, Gurney's pitta was restricted to the semi-evergreen rainforest biome of southernmost Myanmar and southern Thailand. Currently it occurs from a single small site, Khao Nor Chuchi, in Krabi Province, Thailand (BirdLife International 2001). This species is, and was, always restricted to extreme lowland semi-evergreen forest, usually below 160 m, with an understory

containing *Salacca* palms, where it nests (BirdLife International 2000). A central element of its territories are gully systems where moist conditions exist year-round and there is usually access to water in small streamlets. Moisture and shade appear to be crucial. Since almost all feeding takes place on the forest floor, the understory vegetation, humidity, composition of the leaf litter, and availability of earthworms appear to be of greatest importance in determining the distribution of Gurney's pitta (Gretton *et al.* 1993, as cited in BirdLife International 2001). Its diet consists of snails, worms, slugs, and insects of all kinds.

Gurney's pitta was formerly common across much of its range. However, there have been no records of this species in Myanmar since 1914, and there were no field observations in Thailand between 1952 and 1986. Since 1986, intensive surveys have found individuals in at least five localities, although at present it only remains in one: Khao Nor Chuchi. In 1986 there were estimates of 44–45 pairs (BirdLife International 2000). Currently, this species has one of the lowest known populations of any bird species in the world, with only 11 pairs and two spare males counted in a survey at Khao Nor Chuchi (Y. Meekaeo (*in litt.*) 2000; P. D. Round *in litt.* 2000, as cited in BirdLife International 2001). It is considered Critically Endangered by the IUCN (2000). It was originally listed in Appendix III in Thailand in July 1987, but was included in Appendix I of CITES in January 1990 (UNEP 2001).

The primary reason for the decline of this species has been the almost total clearance of lowland forest in southern Myanmar and peninsular Thailand through clear-felling for timber, unofficial logging and conversion to croplands, fruit orchards, coffee, rubber, and oil-palm plantations (BirdLife International 2000). Hunting is also a concern for this species. As recently as April 2000, hunting and trapping (including terrestrial birds) were still being regularly recorded in Khao Pra-Bang Khram Wildlife Sanctuary and the adjacent National Reserve Forest. This problem is exacerbated by the fact that there are few routine patrols so intruders run little risk of being intercepted (*Bird Conservation Society of Thailand Bulletin*, as cited in BirdLife International 2001). Snare-line trapping for the cage-bird trade is also a serious threat (BirdLife International 2000). These birds were relatively easy to obtain in Bankok from the late 1950s to the early 1970s and were entering trade within Thailand as well as to the United Kingdom and United States in the period 1966–1968 and in the early 1980s to June 1985 (Collar *et al.* 1986, as cited in BirdLife International 2001). In 1986, one major animal trading company in Bankok maintained that it still received 5–6 Gurney's pittas per year, and an unidentified contact claimed that as many as 50 birds per year were still entering trade in Thailand (Round and Treesucon 1986, as cited in BirdLife International 2001). Two male Gurney's pittas were seen in captivity in the Khao Khieo Open Zoo, Chonburi, in March 1996 (F. R. Lambert [*in litt.*] 1998, as cited in BirdLife International 2001), and three Gurney's pittas were confiscated from local villagers at Khao Nor Chuchi and returned the forest in the period 1990–1997 (Round and Treesucon 1986, as cited in BirdLife International 2001).

A number of conservation efforts have been initiated for the species. Khao Nor Chuchi was designated a Non-Hunting Area in 1987, and upgraded to a Wildlife Sanctuary in 1993. The Khao Nor Chuchi Lowland Forest Project was established in 1990, which entailed education programs and ecotourism, as well as engaging the local community in participatory management to help reduce pressure on the remaining forest. This has met with limited success. In addition, a series of breeding season censuses were conducted from 1987 to 1989, to locate and quantify populations in peninsular Thailand (BirdLife International 2000).

Gurney's pitta does not represent a monotypic genus. However, the magnitude of threat to the species is high and the immediacy of threat is imminent. We therefore assign this species a priority rank of 2.

Socorro mockingbird (*Mimodes graysoni*)

The Socorro mockingbird is endemic to Socorro in the Revillagigedo Islands in Mexico, where it was the most abundant and widespread landbird in 1925 (Jehl and Parkes 1982, 1983). It was still considered abundant in 1958, but had declined dramatically and was feared to be on the brink of extinction by 1978 (BirdLife International 2000). Surveys in 1988–1990 resulted in estimates of 50–200 pairs (Castellanos and Rodriguez-Estella 1993). In 1993–1994, there were approximately 350 individuals (Martinez-Gomez and Curry 1996). This species is found at elevations above 600 m principally in moist dwarf forests and ravines with a mixture of shrubs and trees (*ibid.*). The Socorro mockingbird is categorized as Critically Endangered in the 2002 IUCN Red List because of its extremely small range and because the high number of sub-adults found in the 1993–1994 survey suggests that the number of mature individuals is also very small (IUCN 2002). The population is estimated at 50–249 individuals and declining (BirdLife International 2000). There is no suitable nesting or foraging habitat remaining in the south of the island because of intensive grazing by sheep (Castellanos and Rodriguez-Estella 1993). There is also a possibility, but no substantial evidence of predation by feral cats (Martinez-Gomez and Curry 1996). The Revillagigedo Islands were declared a Bioshpere Reserve in 1994.

The Socorro mockingbird represents a monotypic genus experiencing a high magnitude of threat that is imminent. We therefore give this species a priority rank of 1.

Caerulean paradise-flycatcher (*Eutrichomyias rowleyi*)

The caerulean paradise-flycatcher is only known from the island of Sangihe, north of Sulawesi, Indonesia (BirdLife International 2001). This species is a sedentary insectivore that occupies primary broadleaf-trophophyllous forest on steep-sided valley slopes and valley bottoms with streams (BirdLife International 2000). Until 1998, the caerulean paradise-flycatcher was thought to be extinct. Currently, the total population is thought to lie between 50 and 100 birds (BirdLife International 2001). This flycatcher is considered Critically Endangered by the IUCN because of its tiny range and population, both of which have undergone a major and continuing decline due to habitat loss due to deforestation and conversion to agriculture (BirdLife International 2000; IUCN 2002). Since 1995, the Action Sampiri project has been conducting field work and conservation awareness programs, and developing ideas for future land use through agreements between interested parties in Sangihe and Talaud. Plans to reclassify "protection forest" on Gunung Sahengbalira on Sangihe Island as a wildlife reserve, with core areas as a strict reserve, are under development (BirdLife International 2000).

The caerulean paradise-flycatcher represents a monotypic genus that faces a high magnitude of threat that is imminent. We therefore assign this species a priority rank of 1.

Progress in Revising the Lists

As described in section 4(b)(3)(B)(iii) of the Act, we must also show that we are making expeditious progress to add qualified taxa to the Lists of Endangered and Threatened Wildlife and Plants and

to remove from the lists taxa for which the protections of the Act are no longer necessary. We are making expeditious progress in listing and delisting taxa as represented by our publications in the **Federal Register** of the following high-priority actions: proposed rule and re-opening of comment periods for three African antelopes (scimitar-horned oryx [*Oryx dammah*], addax [*Addax nasomaculatus*], and dama gazelle [*Gazella dama*)] (68 FR 43706, July 24, 2003; 68 FR 66395, November 26, 2003); 12-month petition finding and proposed rule for Tibetan antelope (*Pantholops hodgsonii*) (68 FR 57646, October 6, 2003); proposed rule to delist the scarlet-chested parakeet (*Neophema splendida*) and turquoise parakeet (*Neophema pulchella*) (68 FR 52169, September 2, 2003); final rules for the population of dugong (*Dugong dugon*) in the Republic of Palau (68 FR 70185, December 17, 2003) and beluga sturgeon (*Huso huso*) (69 FR 21425, April 21, 2004); 90-day petition finding to delist the Mexican bobcat (*Lynx rufus escuinapae*) (68 FR 39590, July 2, 2003); and a 90-day petition finding and re-opening of comment period to list seven foreign butterfly taxa (*Teinopalpus imperialis, Protographium marcellinus* [previously referred to as *Eurytides marcellinus*], *Mimoides lysithous harrisianus* [previously referred to as *Eurytides lysithous harrisianus*], *Parides ascanius, Parides hahneli, Troides* [= *Ornithoptera] meridionalis*, and *Pterourus esperanza* [previously referred to as *Papilio esperanza*]) (not yet published). As stated above, we will promptly prepare listing proposals for five of the species: the giant ibis (*Pseudibis gigantean*), black stilt (*Himantopus novaezelandiae*), Gurney's pitta (*Pitta gurneyi*), Socorro mockingbird (*Mimodes graysoni*), and caerulean paradise-flycatcher (*Eutrichomyias rowleyi*).

Request for Information

We request you submit any further information on the taxa named in this notice as soon as possible or whenever it becomes available. We especially seek information: (1) Indicating that we should remove a taxon from warranted or warranted-but-precluded status; (2) indicating that we should add a taxon to a list of candidate taxa; (3) documenting threats to any of the included taxa; (4) describing the immediacy or magnitude of threats facing these taxa; (5) pointing out taxonomic or nomenclatural changes for any of the taxa; (6) suggesting appropriate common names; or (7) noting any mistakes, such as errors in the indicated historical ranges.

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Authority: This notice of review is published under the authority of the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

TABLE 1.—CANDIDATE REVIEW

[R=listing no longer warranted/removed; C=listing warranted but precluded; L=to be listed]

Status		Scientific name	Family	Common name	Historic range
Category	Priority				
R	N/A	*Nothoprocta kalinowskii*	Tinamidae	Kalinowski's tinamou	Peru.
R	N/A	*Podiceps andinus*	Podicipedidae	Colombian grebe	Colombia.
C	2	*Podiceps taczanowskii*	Podicipedidae	Junin flightless grebe	Peru.
R	N/A	*Pseudobulweria becki*	Procellariidae	Beck's petrel	Papua New Guinea, Solomon Islands.
C	5	*Pterodroma macgillivrayi*	Procellariidae	Fiji petrel	Fiji.
C	2	*Pterodroma axillaris*	Procellariidae	Chatham petrel	Chatham Islands, New Zealand.
C	8	*Pterodroma cookii*	Procellariidae	Cook's petrel	New Zealand.

TABLE 1.—CANDIDATE REVIEW—Continued

[R=listing no longer warranted/removed; C=listing warranted but precluded; L=to be listed]

Status		Scientific name	Family	Common name	Historic range
Category	Priority				
C	2	*Pterodroma phaeopygia*	Procellariidae	Galapagos petrel	Galapagos Islands, Ecuador.
C	2	*Pterodroma magentae*	Procellariidae	Magenta petrel	Chatham Islands, New Zealand.
C	11	*Puffinus heinrothi*	Procellariidae	Heinroth's shearwater	Bismarck Archipelago, Papua New Guinea, Solomon Islands.
C	2	*Leptoptilos dubius*	Ciconiidae	Greater adjutant	South Asia.
L	2	*Pseudibis gigantea*	Threskiornithidae	Giant ibis	Laos, Cambodia.
C	2	*Phoenicopterus andinus*	Phoenicopteridae	Andean flamingo	Peru, Bolivia, Chile, Argentina.
C	2	*Mergus octosetaceus*	Anatidae	Brazilian merganser	Brazil.
R	N/A	*Ortalis vetula deschauenseei.*	Craciidae	Utila chachalaca	Utila Island, Honduras.
C	2	*Penelope perspicax*	Craciidae	Cauca guan	Colombia.
C	8	*Pauxi unicornis*	Craciidae	Southern helmeted curassow.	Bolivia, Peru.
C	2	*Crax alberti*	Craciidae	Blue-billed curassow	Colombia.
C	3	*Tetrao urogallus cantabricus.*	Tetraonidae	Cantabrian capercaillie	Spain.
C	2	*Odontophorus strophium*	Odontophoridae	Gorgeted wood-quail	Colombia.
R	N/A	*Perdix perdix italica*	Phasianidae	Italian grey partridge	Italy.
C	2	*Laterallus tuerosi*	Rallidae	Junin rail	Peru.
R	N/A	*Nesocolpeus poecilopterus*	Rallidae	Bar-winged rail	Fiji.
C	8	*Rallus semiplumbeus*	Rallidae	Bogota rail	Colombia.
C	8	*Porphyrio mantelli*	Rallidae	Takahe	New Zealand.
C	8	*Haematopus chathamensis*	Haematopodidae	Chatham oystercatcher	Chatham Islands, New Zealand.
L	2	*Himantopus novaezelandiae.*	Recurvirostridae	Black stilt	New Zealand.
C	2	*Rhinoptilus bitorquatus*	Glareolidae	Jerdon's courser	India.
C	5	*Numenius tenuirostris*	Scolopacidae	Slender-billed curlew	Russia, Kazakhstan, Ukraine, Bulgaria, Hungary, Romania, Yugoslavia, southern Europe, Greece, Italy, Turkey, Africa, Algeria, Morocco, and Tunisia.
C	2	*Ducula galeata*	Columbidae	Marquesan imperial-pigeon	Marquesas Islands.
C	2	*Cacatua moluccensis*	Cacatuidae	Salmon-crested cockatoo	South Moluccas, Indonesia.
C	5	*Cyanoramphus malherbi*	Psittacidae	Orange-fronted parakeet	New Zealand.
C	8	*Eunymphicus uvaensis*	Psittacidae	Uvea parakeet	Uvea, New Caledonia.
C	8	*Ara glaucogularis*	Psittacidae	Blue-throated macaw	Bolivia.
C	3	*Neomorphus geoffroyi dulcis.*	Cuculidae	Southeastern rufous-vented ground cuckoo.	Brazil.
R	N/A	*Otus elegans botelensis*	Strigidae	Lanyu scops owl	Lanyu Island, Taiwan.
R	N/A	*Glaucis hirsuta*	Trochilidae	Hairy hermit	Panama, Colombia, Bolivia, Venezuela, the Guianas, and Brazil.
C	3	*Phaethomis malaris margarettae.*	Trochilidae	Margaretta's hermit	Brazil.
C	2	*Eriocnemis nigrivestis*	Trochilidae	Black-breasted puffleg	Ecuador.
C	4	*Eulidia yarrellii*	Trochilidae	Chilean woodstar	Peru, Chile.
C	2	*Acestrura berlepschi*	Trochilidae	Esmeraldas woodstar	Equador.
C	8	*Dryocopus galeatus*	Picidae	Helmeted woodpecker	Brazil, Paraguay, Argentina.
C	7	*Sapheopipo noguchii*	Picidae	Okinawa woodpecker	Okinawa Island, Japan.
C	11	*Aulacorhynchus huallagae*	Ramphastidae	Yellow-browed toucanet	Peru.
C	2	*Cinclodes aricomae*	Furnariidae	Royal cinclodes	Peru, Bolivia.
C	2	*Leptasthenura xenothorax*	Furnariidae	White-browed tit spinetail	Peru.
C	2	*Formicivora erythronotos*	Thamnophilidae	Black-hooded antwren	Brazil.
C	2	*Pyriglena atra*	Thamnophilidae	Fringe-backed fire-eye	Brazil.
C	2	*Grallaria milleri*	Formicariidae	Brown-banded antpitta	Colombia.
R	N/A	*Merulaxis stresemanni*	Rhinocryptidae	Stresemann's bristlefront	Brazil.
R	N/A	*Tijuca condita*	Cotingidae	Grey-winged cotinga	Brazil.
C	8	*Scytalopus novacapitalis*	Conopophagidae	Brasilia tapaculo	Brazil.
C	2	*Hemitriccus kaempferi*	Tyrannidae	Kaempfer's tody-tyrant	Brazil.
C	2	*Anairetes alpinus*	Tyrannidae	Ash-breasted tit-tyrant	Peru, Bolivia.
R	N/A	*Serpophaga araguayae*	Tyrannidae	Bananal tyrannulet	Brazil.
C	2	*Phytotoma raimondii*	Phytotomidae	Peruvian plantcutter	Peru.

TABLE 1.—CANDIDATE REVIEW—Continued

[R=listing no longer warranted/removed; C=listing warranted but precluded; L=to be listed]

Status		Scientific name	Family	Common name	Historic range
Category	Priority				
L	2	*Pitta gurneyi*	Pittidae	Gurney's pitta	Myanmar, Thailand.
R	N/A	*Thryothorus nicefori*	Troglodytidae	Niceforo's wren	Colombia.
L	1	*Mimodes graysoni*	Mimidae	Socorro mockingbird	Revillagigedo Islands, Mexico.
C	3	*Cichlherminia iherminieri sanctaeluciae.*	Turdidae	St. Lucia forest thrush	St. Lucia Island, West Indies.
R	N/A	*Turdus poliocephalus poliocephalus.*	Turdidae	Grey-headed blackbird	Norfolk Island, South Pacific
R	N/A	*Acrocephalus caffer longirostris.*	Sylviidae	Moorea reed-warbler	Moorea Island (Society Islands), South Pacific.
C	3	*Acrocephalus caffer aquilonis.*	Sylviidae	Eiao Polynesian warbler	Marquesas Islands.
C	9	*Bowdleria punctata wilsoni*	Sylviidae	Codfish Island fernbird	Codfish Island, New Zealand.
R	N/A	*Trichocichla rufa*	Sylviidae	Long-legged thicketbird	Fiji.
L	1	*Eutrichomyias rowleyi*	Monarchidae	Caerulean paradise-flycatcher.	Sangihe Island, Sulawesi, Indonesia.
R	N/A	*Pomarea mendozae mira*	Monarchidae	Ua Pu flycatcher	Marquesas Islands, South Pacific.
C	8	*Zosterops luteirostris*	Zosteropidae	Ghizo white-eye	Solomon Islands.
R	N/A	*Sporophila insulata*	Thraupidae	Tumaco seedeater	Colombia.
C	11	*Camarhynchus pauper*	Thraupidae	Medium tree-finch	Floreana Island, Galapagos Islands.
C	2	*Nemosia rourei*	Thraupidae	Cherry-throated tanager	Brazil.
C	11	*Tangara peruviana*	Thraupidae	Black-backed tanager	Brazil.
C	12	*Strepera graculina crissalis*	Cracticidae	Lord Howe pied currawong	Lord Howe Islands, New South Wales.

Dated: May 7, 2004.

Marshall Jones,

Deputy Director, Fish and Wildlife Service.

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Federal Register

Friday,
May 21, 2004

Part III

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 31
Federal Acquisition Regulation; Gains and Losses; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAR Case 2004–005]

RIN 9000–AJ93

Federal Acquisition Regulation; Gains and Losses

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) by revising the cost principle regarding gains and losses on disposition or impairment of depreciable property or other capital assets.

DATES: Interested parties should submit comments in writing on or before July 20, 2004, to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to— General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, ATTN: Laurie Duarte, Washington, DC 20405. Submit electronic comments via the Internet to— *www.regulations.gov* or *farcase.2004–005@gsa.gov*.

Please submit comments only and cite FAR case 2004–005 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content. contact Mr. Edward Loeb, Policy Advisor, at (202) 501–0650. Please cite FAR case 2004–005.

SUPPLEMENTARY INFORMATION:

A. Background

The DoD Director of Defense Procurement and Acquisition Policy (DPAP) established a special interagency Ad Hoc Committee to perform a comprehensive review of policies and procedures in FAR Part 31, Contract Cost Principles and Procedures, relating to cost measurement, assignment, and allocation. DPAP announced a series of public meetings in the **Federal Register** at 66 FR 13712, March 7, 2001 (with a "correction to notice" published in the **Federal Register** at 66 FR 16186, March 23, 2001). Public meetings were held on April 19, 2001, May 10 and 11, 2001, and June 12, 2001. Attendees at the public meetings included representatives from industry, Government, and other interested parties who provided views on potential areas for revision in FAR Part 31. The Ad Hoc Committee reviewed the cost principles and procedures and the input obtained during the public meetings; identified potential changes to the FAR; and submitted several reports, including draft proposed rules for consideration by the Councils.

The Councils reviewed the reports related to FAR 31.205–16, Gains and losses on disposition or impairment of depreciable property or other capital assets; FAR 31.205–24, Maintenance and repair costs; and FAR 31.205–26, Material costs. On July 7, 2003, a proposed rule was published for public comment in the **Federal Register** at 68 FR 40466 under FAR case 2002–008.

The Councils, with input from the Ad Hoc Committee, reviewed the public comments and concluded that the proposed rule relating to FAR 31.205–24 and FAR 31.205–26 should be converted to a final rule, with minor changes to the proposed rule; the final rule is being published under a separate **Federal Register** notice (FAR case 2002–008). As a result of the public comments received, the Councils also decided to make substantive changes to the FAR 31.205–16 cost principle and to publish the proposed revisions as a proposed rule in this **Federal Register** notice under the new FAR case 2004–005.

The Councils are recommending several changes to the proposed rule for FAR 31.205–16. In particular, the Councils are recommending that the date of disposition for a sale and leaseback arrangement be revised. The Councils had initially recommended use of the later disposition date. However, in consideration of the public comments, which articulated a myriad of potential issues and problems that could result from the use of the later disposition date, the Councils have revised the proposed rule to state that the disposition date is the date of the sale and leaseback arrangement, rather than at the end of the lease term. The Councils believe this is a more practical approach that will reduce record-keeping and the potential for future disputes.

Interested parties are requested to provide input on the revised disposition date, based on the assumption that the FAR will specify a disposition date and will continue to limit future lease costs to the costs of ownership.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

In response to the proposed FAR rule published under FAR case 2002–008 in the **Federal Register** at 68 FR 40466, July 7, 2003, three respondents submitted comments on FAR 31.205–16. The Councils considered all comments and concluded that, since the changes result in a rule that differs significantly from the proposed rule, it should be published as a proposed rule under a new FAR case 2004–005. Differences between the proposed rule under FAR case 2002–008 and this proposed rule are discussed in Comments 2 and 4 below.

Public Comments:

FAR 31.205–16(b)

1. *Comment*: Two respondents believe that paragraph (b) of the proposed rule is unnecessary, not reflective of the reality of the business decisions, potentially inequitable and not in the interest of either the Government or the contractor. One of these respondents also believes that the proposed rule will place a recordkeeping and reconciliation burden on the contractor that is onerous, complicated, and likely to delay contract closings.

Councils' response: Nonconcur. The Councils continue to believe that the cost principle should explicitly address sale and leaseback arrangements. The Councils believe that specifying the disposition date will eliminate potential disagreements regarding whether the disposition date should be the date of the sale and leaseback arrangement or the date the contractor is no longer leasing the asset. This position is also consistent with the input obtained during the public meetings in Spring 2001.

FAR 31.205–16(b)(2)

2. *Comment*: Two respondents state that the extension of the disposition date beyond the common language use of the term disposition is inequitable because: (1) the Government would recoup gains from a contractor who does not obtain a gain, and (2) the Government would be entitled to a gain of less than the amount of the gain actually realized by the contractor. These respondents further believe that this revision would encourage a contractor to make business decisions that are not mutually beneficial to either party. They believe this revision may encourage contractors to expend

additional allowable costs to relocate to a non-formerly owned facility in order to recoup their full expenditure for leasing. These respondents also assert that it is not always clear when a contractor has finally vacated a facility. They ask how long a contractor must vacate a property to avoid application of the sale/leaseback provisions. One of the respondents also believes that contractor access to the records of the buyer could also be a problem because the provision requires knowledge of the ultimate sales price, data the contractor may not have access to.

One respondent further asserts that the disposition of an asset involves a business decision while the leasing of the asset generally involves a separate business decision. If the asset disposed of requires replacement, that action can be accomplished in a number of ways. The calculation of the gain or loss on the disposition should not be impacted by whether the contractor intends to continue to use the asset under a different financial model.

Councils' response: Partially concur. The Councils had recommended use of the later disposition date. However, in consideration of the myriad of potential issues and problems that could result from the use of the later disposition date, the Councils concur with the recommendation that paragraph (b)(2) of FAR 31.205–16 be revised to state that the disposition date is the date of the sale and leaseback arrangement, rather than at the end of the lease term. This is a more practical approach that will reduce recordkeeping and the potential for future disputes.

3. *Comment*: Two respondents believe the contractor should recognize the gain or loss on a sale and leaseback transaction immediately upon execution of the change in control. These respondents believe that in exchange for sharing the gain, the contractor should be permitted to recover as an allowable cost the reasonable lease payments on the replacement facility, regardless of whether the replacement facility was previously owned or not. One of the respondents also states that this approach would permit timely settlement of the costs in question and result in equity to both the contractor and the Government.

Councils' response. Nonconcur. The Councils disagree with the respondents recommendation to permit the contractor to recover the lease payments that result from the sale and leaseback arrangement. The allowable lease costs relating to a sale and leaseback arrangement have long been limited in the cost principles to what the contractor would have received had they retained title. The basic tenet that underlies this provision is that a contractor should not benefit for entering into a sale and leaseback arrangement. The Councils believe this basic tenet continues to be appropriate. It is important to note that a sale and leaseback arrangement is a voluntary financing mechanism entered into by the contractor. The Councils do not believe the contractor should be entitled to recover additional monies simply because of a paper transaction that provides no significant benefit to the Government.

FAR 31.205–16(c) and (d)

4. *Comment*: A third respondent proposed that the language at paragraph (b) be withdrawn. If the proposed language is not withdrawn, the respondent recommends that it be republished as a proposed rule and address the following three fundamental issues:

a. Why is it equitable for any gain or loss to be recognized in connection with the sale-leaseback transaction?

b. What reason is there that the gain or loss cannot be recognized at the time of the transaction, perhaps with an appropriate adjustment if the sales price and the subsequent rental cost are both below market?

c. In any event, what justification is there for not limiting the amount of gain to be recognized by the amount of depreciation taken?

Councils' response: Partially concur. The Councils agree that the proposed language should be republished as a second proposed rule.

In response to comment 4a, the Councils believe that a gain or loss should be recognized when an asset is disposed of, regardless of whether that disposition relates to a sale and leaseback arrangement or some other method used by the contractor to dispose of the asset. The recognition of a gain or loss is a necessary adjustment because depreciation is an estimate of the usefulness of an asset. When the asset is disposed of, an adjustment is required to reflect the difference between the actual and estimated usefulness of the asset.

The Councils agree with the respondent's assertion that the proposed language could have been interpreted to entitle the Government to recover more than the amount of depreciation that has been taken. This was not the intent of the proposed language. Paragraph (b) includes the statement "Notwithstanding the language in paragraph (c) of this subsection...." Paragraph (c) is currently where the limitation exists. The Councils have therefore revised the language in paragraph (c), and added a new paragraph (d) to eliminate this concern. The language on the limitation is now contained in paragraph (d), which applies to all asset dispositions, including sale and leaseback arrangements.

C. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the cost principles and procedures discussed in this rule. For FY2003, only 2.4% of all contract actions were cost contracts awarded to small business. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR part in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2004–005), in correspondence.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: May 13, 2004.

Laura Auletta,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR part 31 as set forth below:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for 48 CFR part 31 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Amend section 31.205–16 by—

a. Revising paragraph (a);

b. Redesignating paragraphs (b),(c),(d),(e),(f), and (g), as (c),(e),(f),(g),(h), and (i); and

c. Adding new paragraphs (b) and (d).

The revised text reads as follows:

31.205–16 Gains and losses on disposition or impairment of depreciable property or other capital assets.

(a) The Government and the contractor shall include gains and losses from the sale, retirement, or other disposition (but see 31.205–19) of depreciable property in the year in which they occur as credits or charges to the cost grouping(s) in which the depreciation or amortization applicable to those assets was included (but see paragraph (e) of this subsection). However, no gain or loss is recognized as a result of the transfer of assets in a business combination (see 31.205–52).

(b) Notwithstanding the provisions in paragraph (c) of this subsection, when costs of depreciable property are subject to the sale and leaseback limitations in 31.205–11(i)(1) or 31.205–36(b)(2)—

(1) The gain or loss is the difference between the fair market value on the disposition date and the undepreciated balance at the time of disposition; and

(2) The disposition date is the date of the sale and leaseback arrangement.

(c) The Government and the contractor consider gains and losses on disposition of tangible capital assets including those acquired under capital leases (see 31.205–11(i)) as adjustments of depreciation costs previously recognized. The gain or loss for each asset disposed of is the difference between the net amount realized, including insurance proceeds from involuntary conversions, and its undepreciated balance.

(d) The Government and the contractor shall limit the gain recognized for contract costing purposes to the difference between the acquisition cost (or for assets acquired under a capital lease, the value at which the leased asset is capitalized) of the asset and its undepreciated balance (except see paragraph(e)(2)(i) or (ii) of this subsection).

(e) Special considerations apply to an involuntary conversion which occurs when a contractor's property is destroyed by events over which the owner has no control, such as fire, windstorm, flood, accident, theft, etc., and an insurance award is recovered. The following govern involuntary conversions:

(1) When there is a cash award and the converted asset is not replaced, the Government and the contractor shall recognize the gain or loss in the period of disposition. The gain recognized for contract costing purposes is limited to the difference between the acquisition cost of the asset and its undepreciated balance.

(2) When the converted asset is replaced, the contractor shall either—

(i) Adjust the depreciable basis of the new asset by the amount of the total realized gain or loss; or

(ii) Recognize the gain or loss in the period of disposition, in which case the Government shall participate to the same extent as outlined in paragraph (e)(1) of this subsection.

(f) The Government and the contractor shall not recognize gains or losses on the disposition of depreciable property as a separate charge or credit when the contractor—

(1) Processes the gains and losses through the depreciation reserve account and reflects them in the depreciation allowable under 31.205–11; or

(2) Exchanges the property as part of the purchase price of a similar item, and takes into consideration the gain or loss in the depreciation cost basis of the new item.

(g) The Government and the contractor shall consider gains and losses arising from mass or extraordinary sales, retirements, or other disposition other than through business combinations on a case-by-case basis.

(h) Gains and losses of any nature arising from the sale or exchange of capital assets other than depreciable property shall be excluded in computing contract costs.

(i) With respect to long-lived tangible and identifiable intangible assets held for use, no loss is allowed for a write-down from carrying value to fair value as a result of impairments caused by events or changes in circumstances (e.g., environmental damage, idle facilities arising from a declining business base, etc.). If depreciable property or other capital assets have been written down from carrying value to fair value due to impairments, gains or losses upon disposition shall be the amounts that would have been allowed had the assets not been written down.

[FR Doc. 04–11458 Filed 5–20–04; 8:45 am]

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Federal Register

Friday,
May 21, 2004

Part IV

Department of Transportation

Federal Motor Carrier Safety Administration

49 CFR Part 380

Minimum Training Requirements for Entry-Level Commercial Motor Vehicle Operators; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 380

[Docket No. FMCSA–1997–2199]

RIN 2126–AA09

Minimum Training Requirements for Entry-Level Commercial Motor Vehicle Operators

AGENCY: Federal Motor Carrier Safety Administration, DOT.

ACTION: Final rule.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) establishes standards for mandatory training requirements on four specific topics for entry-level operators of commercial motor vehicles (CMVs), who are required to hold or obtain a commercial driver's license (CDL). This action responds to a study mandated by the Intermodal Surface Transportation Efficiency Act of 1991 that found the private sector training of entry-level drivers in the heavy truck, motorcoach, and school bus industries was inadequate. The purpose of this rule is to enhance the safety of CMV operations on our nation's highways.

DATES: *Effective Date*: The effective date is July 20, 2004, except for § 380.500, which is effective from July 20, 2004, through June 30, 2005.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Finn, CDL Team, Office of Safety Programs (MC–ESS), (202) 366–0647, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

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Background

Section 4007(a)(1) of the Motor Carrier Act of 1991 (Title IV of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102–240, 105 Stat. 1914, 2151) directed the U.S. Department of Transportation to study "the effectiveness of the efforts of the private sector to ensure adequate training of entry-level drivers of commercial motor vehicles." In preparing the study, the agency had to solicit the views of interested persons. The agency was also required by sec. 4007(a)(2) to "commence a rulemaking proceeding on the need to require training of all entry-level drivers of commercial motor vehicles" and establish Federal minimum training requirements. This legislation built on the prior authorities of the Federal Highway Administration (FHWA) (the predecessor agency to FMCSA).

The enactment of ISTEA occurred in December 1991. This sec. 4007 rulemaking began before the agency had implemented the CDL regulations fully. The principal regulation of the CDL program did not become effective until April 1992, when CMV drivers could not operate CMVs without first having taken and passed written and driving tests and have the State issue the CDL. When Congress mandated entry-level driver training the full impact of the CDL program on motor carrier safety was not known. FMCSA has had twelve years of experience with testing and licensing CMV drivers. FMCSA now knows the CDL program improved the quality of CMV drivers. Given the impact of the CDL program over the last 12 years, FMCSA has taken a basic approach in this rulemaking to improve safety.

In the early 1980's, FHWA determined that a need existed for technical guidance in the area of truck driver training. Research at that time had shown that many driver-training schools offered little or no structured curricula or uniform training programs for any type of CMV.

To help correct this problem, the agency developed, and in 1985 issued, the "Model Curriculum for Training Tractor-Trailer Drivers" (1985, GPO Stock No. 050–001–00293–1), which incorporated the agency's "Proposed Minimum Standards for Training Tractor Trailer Drivers" (1984). The Model Curriculum, as it is known in the industry, is a broad set of recommendations that incorporates standardized minimum core curriculum guidelines and training materials, as well as guidelines pertaining to vehicles, facilities, instructor hiring practices, graduation requirements, and student placement. Curriculum content includes the following areas: Basic operation, safe operating practices, advanced operating practices, vehicle maintenance, and non-vehicle activities.

The Professional Truck Driver Institute (PTDI) was created in 1986 by the motor carrier industry to certify training programs offered by truck driver training schools. Originally named the Professional Truck Driver Institute of America, the group changed its name in 1998 to reflect the addition of Canada to the organization. The Model Curriculum is the base from which the PTDI's certification criteria were derived. The PTDI, in mid-1988, began certifying truck-driver training programs across the country. As of February 2003, approximately 64 schools in 27 States and Canada have received the PTDI certification. Although many schools have a number of truck driving courses, most have only one course certified by PTDI.

The Commercial Motor Vehicle Safety Act of 1986 (CMVSA) (49 U.S.C. 31301 *et seq.*), although not directly targeted at driver training, was intended to improve highway safety. Its goal was to ensure that drivers of large trucks and buses possess the knowledge and skills necessary to safely operate those vehicles on public highways. The CMVSA established the CDL program and directed the FHWA to establish minimum Federal standards, which States must meet when licensing CMV drivers. The CMVSA applies to virtually anyone who operates a CMV in interstate or intrastate commerce, including employees of Federal, State, and local governments. As defined by the implementing regulation (49 CFR 383.5), a CMV is a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the vehicle meets one or more of the following criteria:

(a) Has a gross combination weight rating (GCWR) of 11,794 or more kilograms (26,001 or more pounds) inclusive of a towed unit with a gross vehicle weight rating (GVWR) of more than 4,536 kilograms (10,000 pounds).

(b) Has a GVWR of 11,794 or more kilograms (26,001 or more pounds).

(c) Is designed to transport 16 or more passengers, including the driver.

(d) Is of any size and is used in the transportation of hazardous materials as defined in 49 CFR 383.5.

In accordance with the CMVSA, all drivers of CMVs must possess a valid CDL in order to be properly qualified to operate the vehicle(s) they drive. In addition to passing the CDL knowledge and skills tests required for the basic vehicle group, all persons who operate or expect to operate any of the following vehicles, which have special handling characteristics, must obtain endorsements under 49 CFR 383.93:

(a) Double/triple trailers.

(b) Passenger vehicles.

(c) Tank vehicles.

(d) Vehicles transporting hazardous materials as defined in 49 CFR 383.5.

For all endorsements, the driver is required to pass a knowledge test. The driver must also pass a skills test to obtain a passenger endorsement.

The CDL standards do not require the comprehensive driver training proposed in the Model Curriculum because the CDL is a licensing standard as opposed to a training standard. Accordingly, there are no prerequisite Federal or State training requirements to obtain a CDL.

The agency also completed two projects that contributed to an enhanced understanding of driver training. Although they were not specifically designed to address one type of driver training versus another or to address specific items that would be included in a minimum training standard, they do provide perspective on the importance of driver training and the need for minimum training requirements. The first project took place in December 1994 and involved focus groups to obtain information about highway safety issues relating to commercial motor carriers. The second project was the 1995 National Truck and Bus Safety Summit. A copy of the "1995 Truck and Bus Safety Summit, Report of Proceedings" is in the public docket.

Advance Notice of Proposed Rulemaking

Pursuant to section 4007(a)(2) of ISTEA, the agency began a rulemaking proceeding on the need to require training of all entry-level CMV drivers. On June 21, 1993, the agency published in the **Federal Register** an advance notice of proposed rulemaking (ANPRM) (58 FR 33874).

The ANPRM stated "Although transit buses (designed to transport 16 or more passengers) also meet the definition of a CMV, they will not be considered because these vehicles are almost all operated by municipalities or other public agencies. Because the ISTEA specifies that the FHWA [Federal Highway Administration] report on the effectiveness of 'private sector efforts' to ensure adequate training of CMV drivers, we believe Congress intended to exclude training of transit bus drivers from this rulemaking." In addition, the ANPRM explained that "Although the definition of a CMV in the Motor Carrier Safety Act of 1984 included a weight threshold of 10,001 pounds or more (49 CFR 390.5), the FHWA believes any potential CMV training standard should be considered an additional CDL requirement and thus subject to the higher jurisdictional threshold of that program." The CDL program's higher jurisdictional thresholds were discussed above.

In the ANPRM, the agency asked 13 questions, which addressed training adequacy standards, curriculum requirements, the CDL, the definition of "entry-level driver," and training, pass rates and costs.

The agency received 104 comments to the ANPRM. There was no consensus among the commenters on the issue of mandated entry-level driver training. The heavy truck and bus industries were against mandated training; the International Brotherhood of Teamsters was in favor. When the agency published a notice on April 25, 1996, reopening the docket (61 FR 18355), it received 48 additional comments on a training adequacy study and cost-benefit analysis. On November 13, 1996, the agency held a public meeting at the Department of Transportation headquarters in Washington, DC, to discuss mandatory training for entry-level CMV drivers. There were 26 persons who participated at the public meeting.

A detailed analysis of the questions in the ANPRM and comments received by the agency appeared in the Notice of Proposed Rulemaking (NPRM) published in the **Federal Register** on Friday, August 15, 2003 (68 FR 48863).

Adequacy of Commercial Motor Vehicle Driver Training

Concurrent with the development of the ANPRM, the agency conducted a study completed in 1995, as required by section 4007(a)(1) of the ISTEA, on the effectiveness of private sector efforts to train entry-level CMV drivers. The agency limited the study to drivers in the heavy truck (26,001 or more pounds), motorcoach, and school bus industries. A copy of the study "Adequacy of Commercial Motor Vehicle Driver Training" is in docket FMCSA–1997–2199. The findings are summarized in the NPRM, and indicated that neither the heavy truck, motorcoach, nor school bus segments of the CMV industry were providing adequate entry-level driver training.

Driver Safety Initiatives

This final rule is part of an overall FMCSA effort to improve its driver safety programs. These include improvements to the CDL tests and a study on graduated licensing. Section 4019 of the Transportation Equity Act for the 21st Century (Pub. L. 105–178; June 9, 1998) (TEA–21) requires the agency to determine whether the current system of CDL testing is an accurate measure of an applicant's knowledge and skill needed to operate a CMV.

More specifically, the agency is examining the various CDL skill test components to determine whether testing modifications are necessary. The agency plans to coordinate with the Driver License and Control Committee of the American Association of Motor Vehicle Administrators to determine if the required skill tests can be given in a more efficient and less costly manner.

Section 4019 of TEA–21 also required the agency to identify the costs and benefits of a graduated licensing system. The agency published a notice in the **Federal Register** on February 25, 2003, asking for public comment on whether a graduated licensing system for CMV operators is a workable concept (68 FR 8798). The agency plans to use this information to help determine the costs and benefits of a graduated CDL.

The agency published an interim final rule in the **Federal Register** on May 13, 2002 (67 FR 31978), establishing a process to ensure that new entrant motor carriers are knowledgeable about applicable Federal Motor Carrier Safety Regulations (FMCSRs). Many new entrant motor carriers are entry-level driver owner-operators. The rule requires a safety audit to educate the motor carrier on compliance with the FMCSRs and Hazardous Materials Regulations, and identify areas where the motor carrier may be deficient in terms of compliance. The safety audit examines selected motor carrier records and assesses the adequacy of the new entrant's basic safety management controls. Areas covered include qualification of drivers and hours of service of driver requirements for employers. The agency intends to improve the safety performance of new entrants by providing educational and technical assistance to new motor carriers as they begin their new business. This new entrant process will include the verification of training for entry-level drivers in today's final rule: (1) Driver qualification requirements; (2) hours of service of drivers; (3) driver wellness; and (4) whistleblower protection.

Finally, the Motor Carrier Safety Assistance Program (MCSAP) is a Federal grant program that provides financial assistance to States, the District of Columbia, and eligible territories to conduct roadside inspections and other enforcement activities designed to improve CMV safety. The goal of the MCSAP is to reduce the number and severity of crashes and hazardous materials incidents involving CMVs through uniform, consistent, and effective safety programs. Investing grant funds in appropriate safety programs increases the likelihood that CMV safety defects, driver deficiencies, and unsafe motor

carrier practices will be detected and corrected before they become contributing factors to crashes. Since 1984, the MCSAP has provided an effective forum for FMCSA and States to work cooperatively to improve motor carrier, CMV, and driver safety. Even though roadside inspections remain the primary activity under the program, the States also perform a variety of other enforcement activities including compliance reviews of motor carrier operations. The compliance review provides the agency with an additional opportunity to verify motor carrier compliance with driver entry-level training requirements.

This final rule represents FMCSA's most recent action to improve driver safety. It establishes minimum training standards by requiring entry-level drivers to receive training in driver qualification requirements, hours of service of drivers, driver wellness, and whistleblower protection. These training areas are not covered by the CDL tests. Each of these areas focuses on the CMV driver, who the agency believes is key to promoting safety on our nation's highways. FMCSA believes that training in these four areas will serve to set a floor of safety for entry-level drivers.

Summary of NPRM Provisions

For purposes of the NPRM, FMCSA defined an entry-level driver as a person with less than two years experience operating a CMV that required a CDL. However, drivers with one-year experience operating such a CMV, who have a good driving record, would be grandfathered and therefore would not have to take the proposed training. The proposal did not specify what a good driving record would look like.

In the NPRM, the agency proposed training for entry-level drivers based on three main principles. First, the agency directed the NPRM to drivers included in the 1995 study discussed above, *i.e,* only drivers in the heavy truck, motorcoach, and school bus industries. Excluded were: (1) Transit bus drivers subject to Federal Transit Administration regulations; (2) drivers operating property-carrying CMVs with gross vehicle weight ratings under 26,001 pounds; (3) drivers operating hazardous material laden CMVs not required to placard the CMV in accordance with 49 CFR part 172, subpart F (§§ 172.500 through 172.560); and (4) drivers operating CMVs laden with any quantity of a material listed as a select agent or toxin in 42 CFR part 73. Second, the agency focused the NPRM to drivers who operate in interstate commerce subject to the Motor Carrier Safety Act of 1984. Third, the agency narrowed the NPRM to those training topics that extend beyond the scope of the CDL test.

The NPRM thus addressed: (1) Driver medical qualification and drug and alcohol testing, (2) driver hours of service rules, (3) driver wellness, and (4) whistleblower protection. The agency believed that training in these four areas would serve to set a floor of safety for entry-level CMV drivers, and at the same time represent a reasonable cost investment for drivers or employers to implement. The NPRM did not specify a required number of hours for the training, but the agency's cost-effectiveness estimate was premised on 10.5 hours of training for heavy truck and motorcoach drivers and 4.5 hours of training for school bus drivers. The NPRM proposed only two training topics for school bus drivers: driver wellness and whistleblower protection. The NPRM included a specific discussion of what would be covered in each of the four areas of this training.

The NPRM proposed that the employer would have to maintain evidence of the instruction for review by an FMCSA official seeking to verify that the training requirement had been met. Informal, unverifiable, or undocumented communication between the entry-level driver and his or her employer would not be acceptable. A training certificate that a driver had received the training would be maintained in the driver's personnel file. Employers would have had to ensure that currently employed entry-level drivers, who did not qualify for grandfathering, receive the required training no later than 90 days after the regulations go into effect.

Discussion of Comments to the NPRM

The FMCSA received 38 written comments on the NPRM. Commenters included motor carriers, associations, training organizations, a union, a public interest organization, and individuals.

General Support

Eleven commenters generally support the FMCSA's proposal. For example, the American Trucking Associations (ATA) states, "ATA generally supports the proposed minimum training requirements and FMCSA's overall efforts to improve the Commercial Driver's License (CDL) program." The National Private Truck Council, Inc. (NPTC), Consolidated Safety Services, Inc. (CSS), American Moving and Storage Association (AMSA), the Tree Care Industry Association (TCIA), McLane Company, Inc. (McLane), Tri-State Semi Driver Training, Inc. (Tri-State), the Commercial Vehicle Training Association (CVTA), American Bus Association (ABA), the Commercial Vehicle Safety Alliance (CVSA), and the International Brotherhood of Teamsters (IBT) make similar statements. CVTA states that it "believes that the Proposed Rules represent a first step in recognizing the need for formal training for entry-level drivers." The ABA states, "we believe that minimum training requirements for entry-level drivers are long overdue." The CVSA states, "We would like to first acknowledge the agency's continued commitment to safety—and the fact that training is a critical component. The commercial vehicle industry indeed is a profession. Highly skilled workers are required, both in industry and enforcement. Thus, we support this rulemaking because we believe it will save lives." The IBT states, "most motor carrier employers do not provide their entry-level drivers adequate training or instruction. The IBT thus supports FMCSA's efforts to correct this problem."

Several commenters endorse the proposal to require training in the four prescribed areas. CSS endorsed rules that mandatory training in (1) driver qualifications; (2) driver hours of service rules; (3) driver wellness; and (4) whistleblower protection are important additions covering areas not treated by CDL testing. AMSA, McLane, and Tri-State state that they or their members already include some or all of these topics in their training.

In addition to providing general support, most of these commenters provide comments and suggestions on specific provisions in the proposed rule, which are described below.

The Proposal Is Too Burdensome

Central Tech states that, except for whistleblower protection, most good driver training schools already cover the four proposed topics. However, the NPRM places the burden for training in these subject areas back on the trucking companies. Central Tech questions how companies would comply with the certificate requirement if these companies rely on the training provided by the schools. The commenter asks, are the "schools that already train in these areas going to be required to issue a separate certificate?'

The Petroleum Marketers Association of America (PMAA) states that requiring 10.5 hours for the proposed training would be an unreasonable amount of time for PMAA members. The commenter states, "PMAA members are small companies with sometimes only a few employees. If one of those employees is unavailable for over a day,

this will have a serious financial impact on our member's operations."

FMCSA Response: Although the proposal does not specify a required number of hours for the training, the agency estimates that an employer or other training provider would need to devote about 10 hours of training for all heavy truck, motorcoach, and private contractor school bus drivers. These are nationwide estimates of the average length of time needed to train drivers in the four required subject areas.

Today's final rule allows employers to provide the required training in a range of settings. Various entities can provide the training, including the employer, a training school, or a class conducted by consortia or associations of employers. The proposal discussed that currently employed drivers will be entitled to a 90-day grace period. The FMCSA has determined that drivers that began driving CMVs within 10 months before today's final rule and two months after today's final rule will be considered currently employed drivers subject to this 90-day grace period. These drivers are permitted to operate a CMV during the 90-day period pending the completion of training. The agency also believes that employers can train these entry-level drivers in shifts.

In response to Central Tech's question about whether schools that already train in the areas made final today will be required to issue a separate certificate, the training provider would not have to issue the entry-level driver a separate training certificate. However, the training school's certificate or diploma given to the driver must have wording that is substantially in accordance with the wording of the training certificate contained in this final rule.

The Proposal Will Not Ensure Safety

Six commenters state that the proposals in the NPRM will not ensure better driver safety training or improve safety in general.

The United Motorcoach Association (UMA) states that, along with school buses, the motorcoach industry is the safest mode of ground passenger transportation. "There is no evidence either in existing data or anecdotal evidence that shows that the proposals in this NPRM will do anything to improve our already superior safety record."

The National Solid Wastes Management Association (NSWMA) states that the proposed training may divert training time and resources away from more meaningful methods of improving safe driving, such as on-the-job observations by route supervisors. Similarly, C. R. England, Inc. states that, "training in current topics that may be more effective in deterring the types of target accidents may be displaced to accommodate the proposed mandated hours. The overall effect may result in an increase in accidents."

The Truckload Carriers Association (TCA) states that information on the four topics is already being voluntarily provided to drivers by many carriers.

The National Association of Publicly Funded Truck Driver Schools (NAPFTDS) and the National Ground Water Association (NGWA) make similar comments.

FMCSA Response: FMCSA believes this final rule will promote safety because it covers new areas not covered by the CDL tests and it places a training responsibility on employers and entry-level drivers. However, the rule does not mandate training hours. The FMCSA believes motor carriers must address training needs to properly train inexperienced drivers. FMCSA is emphasizing that these requirements are a training responsibility by placing the entry-level driver training requirements in part 380. Compliance will be checked at the carrier's place of business during a compliance review. Because the requirement is not a driver licensing issue to be administered by the State licensing agency, enforcement officials will not check for compliance at roadside.

The CMV driver is key to truck and bus safety. The rule is part of FMCSA's overall effort to improve its safety programs. These efforts include improvements to the CDL tests, a graduated licensing study, the new entrant motor carrier standards, and the MCSAP program. Viewed in this overall context, the FMCSA believes this overall effort will improve the safety of entry-level drivers and meet the Congressional directive for rulemaking. This final rule is one prong of the overall effort. See also the FMCSA's discussion above in reference to Central Tech's comments.

The Proposal Does Not Comply With the Statute

The Advocates for Highway and Auto Safety (AHAS) strongly object to the proposed rule on the basis that it does not comply with Section 4007(a) of the ISTEA. AHAS states, "Although the FMCSA was directed by Congress in Section 4007(a) of the Intermodal Surface Transportation Assistance Act of 1991 (ISTEA), Public Law 102–240 (December 18, 1991), to conduct rulemaking on the need for entry-level driving training, the agency in this notice clearly seeks to evade that legislative directive."

AHAS states that in the review of the effectiveness of private sector entry-level driver training required by section 4007(a), the FHWA found that private sector efforts at transmitting basic CMV driver skills and knowledge training are fundamentally inadequate, yet in the NPRM preamble FMCSA stated "the CDL gives the novice driver the basic knowledge and skill necessary to operate a CMV."

AHAS also states that under section 4007(a) FMCSA is required to submit a report to Congress if it determines that entry-level driver training is not necessary. The report is to explain why such training is not needed and must include a benefit-cost analysis to justify the decision. AHAS states:

> Neither the FMCSA nor the FHWA has issued a study to support such a negative finding. On the contrary, the results of the research conducted to [sic] show that basic skills and knowledge training in the private sector are inadequate. Yet the FMCSA has proposed leaving these inadequate efforts undisturbed by federal regulation designed to advance the quality of entry-level commercial driver skills and knowledge. Instead, the agency only proposes to require that novice drivers receive instruction in four additional areas: driver qualifications, hours of services governing commercial driver duty time, driver wellness, and whistle blower protection. * * * No baseline training of any kind is required in this notice; the agency is content to allow currently inadequate approaches to ensuring basic driver competence in the operation of large trucks and buses to remain unchanged. * * * The proposed novice driver training is a legally insufficient response to the statutory mandate and clearly violates legislative intent.

The Sage Corporation (Sage) states that the proposed training program will have little impact on whether entry-level drivers are receiving adequate training.

FMCSA Response: The FMCSA believes its proposal meets the requirements of the statute to improve private sector training. The agency stated in the CDL final rule on July 21, 1988 (53 FR 27628) that at least "20 States waive testing if the classified driver's license applicants meet certain conditions, such as certification of training and testing by their employer, and two States recognize training schools." The States also have had the liberty to impose more stringent public sector training efforts than the minimum necessary to pass their CDL tests.

The agency requires four minimum training areas for operating in interstate commerce. FMCSA does not believe it should duplicate training that the public and private sectors provide a driver to operate a CMV before taking the CDL

tests. The agency believes that the four additional areas in today's final rule will provide entry-level drivers with fundamental knowledge necessary for beginning operations in interstate commerce: (1) Driver qualification requirements; (2) hours of service of drivers; (3) driver wellness; and (4) whistleblower protection. The ongoing FMCSA efforts to address the adequacy of CDL testing is the better place to focus training issues over the actual operation of CMVs than in this rulemaking.

Proposal Should Be Performance Based

C. R. England comments that instead of mandating the hours required for training, the FMCSA should set standards and allow drivers and employers to determine the most appropriate methods for meeting those standards. CVSA also stated that the training should be performance-based to accurately reflect the level of understanding by the participants.

FMCSA Response: The agency proposed a set of standards that would allow drivers and employers to determine the most appropriate methods for meeting those standards. The agency believes the entry-level training in this rule is performance-based because the agency specifies the general content of the four topic areas of required training. However, the agency believes CVSA's comments imply a testing format that the agency cannot oversee and does not want to require of an employer. Employers, however, may test their entry-level drivers or have them tested. The required training does not specify the number of hours of training, but provides estimates that the agency used as averages across the heavy truck, motorcoach, and private contractor school bus industries. Further information on the estimates may be found in the cost-effectiveness analysis in the docket, and is summarized in the NPRM.

Training Topics Should Be Part of CDL Program

Nine commenters state that the goal of improving driver safety would be better realized if the training topics contained in the proposed rule were made part of the CDL curriculum. The commenters are: NRMCA, PMAA, Colorado Ready Mixed Concrete Association/Colorado Rock Products Association (CRMCA/CRPA), National School Transportation Association (NSTA), C.R. England, Inc., AMSA, UMA, ABA, and NPTC. Most of the commenters believe that this would be the least costly way to accomplish the desired training in the four subject areas proposed. Several of the commenters make the further point that the responsibility for ensuring that this training has occurred should be with the State licensing agency rather than the employer. NPTC states that making the new training requirement part of the CDL licensing process would mean that an employer could assume that a driver with a valid CDL has received the appropriate training.

NPTC believes that incorporating the driver training into the CDL would assist employers in the event of litigation arising from a vehicle collision where the adequacy of the driver's training is at issue. Similarly, C.R. England, Inc. states that if the proposed requirements are not added to the testing requirements of the CDL, "the CDL competency is undermined to the point of putting carriers at legal risk for using inexperienced drivers."

FMCSA Response: FMCSA believes that requiring the State to administer, and enforce at roadside inspections, the entry-level driver training requirements would add an unnecessary complication to the CDL program. FMCSA believes the training certificate in the driver personnel or qualification file is sufficient documentation that a driver has met the entry-level driver training requirement.

The FMCSA believes motor carriers should address training needs to properly train inexperienced drivers. By placing the entry-level driver training requirements in part 380, FMCSA is emphasizing that these requirements are a training responsibility and that compliance will be checked at the carrier's place of business during a compliance review. Because the requirement is not a driver licensing issue to be administered by the State licensing agency, enforcement officials will not check for compliance at roadside. (Roadside enforcement officials may, however, check an entry-level driver's CDL to verify the presence of proper endorsements, such as passenger or school bus endorsements.)

Mandatory Training Standards

Among the nine commenters that address the issue whether training should be made mandatory, seven favor mandatory training, and two oppose it.

NADA and Tri-State oppose mandatory training. Tri-State expresses concern at what it labeled a "one size fits all" approach. This commenter favors an approach that identifies competencies expected of a safe driver and then measures those competencies through outcome testing. NADA believes that entry-level drivers would collectively benefit from a more rigorous training regime. It also believes that the Model Curriculum should be declared "the basis for training adequacy," and that the four areas covered by the NPRM could then be added to the Model Curriculum. At the same time, NADA objects to a Federal mandate for entry-level training. Similarly, McLane "urges FMCSA to revise the existing Model Curriculum or develop a new supplemental curriculum to reflect these new minimum training requirements."

The eight commenters who favor mandatory training give reasons similar to those discussed earlier under the topic "Current CDL training inadequate." [Daecher, NATFTDS, FVTC, Future Truckers of America (FTA), Tri-State, CVTA, CVSA, and CSS.] That is, most believe that a minimum mandatory training requirement is needed because, as NADA states, "mere acquisition of a CDL does not properly prepare a potential driver for safe operation of CMVs on the nation's highways." CVTA suggests that the rule require that a CDL applicant complete all Model Curriculum courses. Training in all courses should total at least 160 hours, CVTA recommends.

FVTC requests FMCSA to withdraw the current proposal and to act on the FHWA's July 1995 report, "Assessing the Adequacy of Commercial Motor Vehicle Driver Training." The commenter states that the report concluded that "of those heavy truck carriers that hire entry-level drivers only one in 10 would be expected to provide adequate training."

Daecher states that the Model Curriculum fails to include training on the use of anti-lock brake systems or engine retarders.

FMCSA Response: FMCSA is making the training standards mandatory. The agency believes the standards have to be mandatory to be effective at improving interstate driver proficiency in the four topics selected. FMCSA has identified the four competencies expected of a safe driver operating in interstate commerce. FMCSA is leaving the outcome testing to the employers. The FMCSA believes the 160-hour Model Curriculum training course is too burdensome. However, if an employer believes its drivers need that amount of training, it may provide that amount.

FMCSA did not include engine retarders, as Daecher suggests, because there is no requirement that vehicles be equipped with such a device. Training in anti-lock brake systems is covered on the CDL test. The required skills test in § 383.113 lists the ability to stop the vehicle, as well as air brake application. FMCSA believes CDL examiners will

test entry-level drivers on anti-lock brake application and inspection of the anti-lock brake system in State CDL tests.

Comments on Specific Issues in Proposed Rules

General Applicability

Several commenters ask for clarification on applicability or make suggestions as to whom it should apply. TCIA seeks confirmation that the rule only applies to CDL drivers and not to commercial drivers who drive vehicles under 26,001 gross vehicle weight rating (GVWR). UMA objects that FMCSA bases its entry-level driver training almost solely on the heavy truck industry, but applies the rule to the motorcoach industry, which has a better safety record. In addition, UMA believes that including motorcoach drivers in the NPRM, but exempting transit bus drivers from the training standards, is flawed. UMA states that the premise that transit operations are somehow safer than motorcoach operations is not borne out by the data. UMA urges FMCSA to exempt the motorcoach industry.

CVSA disagrees with the proposed rule applying only to "drivers who drive in interstate commerce and are subject to the CDL requirements." It believes the safety related standards should be the same for all CDL drivers whether they are interstate or intrastate drivers. The CDL requirements should be applied evenly across the board.

FMCSA Response: The final rule is applicable to all persons subject to the CDL requirements in 49 CFR part 383 operating in interstate commerce, as defined in 49 CFR 390.5. It will include all motor vehicles, trucks, motorcoaches, buses, school buses, or combinations of motor vehicles used in interstate commerce to transport passengers or property if the motor vehicle—

(a) Has a gross combination weight rating of 11,794 kilograms or more (26,001 pounds or more) inclusive of a towed unit(s) with a gross vehicle weight rating of more than 4,536 kilograms (10,000 pounds); or

(b) Has a gross vehicle weight rating of 11,794 or more kilograms (26,001 pounds or more); or

(c) Is designed to transport 16 or more passengers, including the driver; or

(d) Is of any size and is used in the transportation of any material that has been designated as hazardous under 49 U.S.C. 5103 and is required to be placarded under subpart F of 49 CFR part 172 (§§ 172.500 through 172.560), or any quantity of a material listed as a select agent or toxin in 42 CFR part 73.

The rule will not apply to persons subject to the Federal Transit Administration's jurisdiction or to persons excepted by 49 CFR 390.3(f), including transportation performed by the Federal government, a State government, any political subdivision of a State, any agency that has been established under a compact between States that has been approved by the Congress of the United States, or any school bus operations as defined in 49 CFR 390.5.

The agency chose not to include drivers subject to Federal Transit Administration regulations and other Federal, State, and local government agencies in the rulemaking because these vehicles are almost all operated by municipalities or other public agencies. ISTEA specified that the agency report on the effectiveness of "private sector efforts" to ensure adequate training of CMV drivers. Therefore, FMCSA believes Congress intended to exclude training of transit bus drivers and other Federal, State, and local government agencies from this rulemaking. *See* 58 FR 33874 (June 21, 1993).

Non-transit motorcoach operations are included in today's final rule because Congress specifically wanted the agency to study the effectiveness of "private sector efforts" to ensure adequate training of CMV drivers. The agency studied the motorcoach industry's private sector training efforts and found them to be inadequate. FMCSA believes that the training adequacy study had a sufficiently diverse group of cargo and passenger carriers to be representative of the CMV industry the agency regulates.

Exempt School Buses

National School Transportation Association (NSTA) urges the FMSCA to exempt school bus drivers from the required driver training outlined in this rule. NSTA does not oppose meaningful driver training for school bus drivers, but disagrees with the agency's arguments to include school bus drivers. NSTA explains that its industry is 40 percent safer than transit drivers who are exempt from this rule. As justification for exempting transit operators (and for exempting some school bus operators from two of the requirements), the NPRM cites the fact that those entities are not subject to parts 350 through 399 of the FMCSRs. NSTA claims this is a disingenuous argument, because FMCSA does subject these entities to CDL requirements (part 383) and to drug and alcohol testing requirements. NSTA submits that training requirements could be tied to the CDL just as the drug and alcohol requirements are, ensuring that all drivers receive training in topics the agency considers essential for safe driving.

NSTA states that "the agency also cites FTA training materials as a reason to exempt transit operators * * *" There is no indication that the materials cover the areas proposed in this rule; in fact, the FTA training materials appear to be less comprehensive than much of the State-required school bus training. Therefore, if it is reasonable to exempt transit operations from the requirements, then it is reasonable to exempt all school bus operations as well. On the other hand, if the agency believes that the proposed training requirements will reduce crashes, then all drivers should be subject to them.

Regarding proposed entry-level driver training standards for school bus drivers, a school bus contractor opposes federally mandated driver training standards and believes the process should be left to the States, and enforced by the States. In addition, it states that the cost of training would be a hardship on already over-stretched public school budgets.

FMCSA Response: FMCSA believes private sector school bus operations must be included in today's final rule. The ISTEA directed the agency to study the effectiveness of the efforts of the private sector to ensure adequate training of entry-level drivers of CMVs. The agency limited the study to those drivers required to hold a CDL to operate a CMV, including private sector school bus drivers. The study found training for this type of CMV driver to be inadequate. Sec. 4007(a)(2) required the agency to do the rulemaking.

The agency must also clarify a possible misunderstanding. The statutory mandate underpinning this rulemaking focuses the agency to address only "private sector efforts." The agency is clarifying the applicability for the final rule. Today's final rule applies only to private school bus contractors, *e.g.*, employers and drivers operating school buses in the private sector. Thus, the exceptions provided by § 390.3(f)(1) and (2) apply to today's final rule.

In response to the NSTA comment, the NPRM incorrectly stated that government transit drivers are exempt from parts 350 through 397 of the Federal Motor Carrier Safety Regulations (FMCSRs). The reference in the NPRM to the exemption to parts 350 through 397 of the FMCSRs should have included the phrase "except as otherwise provided." Section 390.3(f)(1) and (2) provide that unless otherwise

specifically provided, the rules in 49 CFR parts 350 through 399 do not apply to—

(1) All school bus operations as defined in 49 CFR 390.5; and

(2) Transportation performed by the Federal government, a State, or any political subdivision of a State, or an agency established under a compact between States that has been approved by the Congress of the United States * * * The agency has corrected the NPRM misstatement in the final rule.

FMCSA disagrees with the school bus contractor which opposes federally-mandated driver training standards and believes the process should be left to, and enforced by the States. The agency is changing the training topics for school bus drivers in this final rule. The specifics will be discussed later under the heading Training Topics.

If the NSTA has suggestions that it believes will improve the FTA's training materials for alcohol and controlled substances testing, the agency suggests NSTA contact the FTA directly. The agency believes that FTA is the best qualified to comment on the comprehensiveness of its training materials.

FMCSA is encouraged by the NSTA statement that school bus drivers receive pre-service training of at least 40 hours and in-service training of at least 10 hours. The agency believes this shows that the additional amount of time spent learning about driver qualifications, hours of service, driver wellness, and whistleblower protection would not be unduly burdensome.

Entry-Level Driver Definition and Grandfathering

The proposal defined an entry-level driver as a driver with less than two years experience operating a CMV with a CDL. One commenter agrees with this definition. However, several commenters suggest that the definition should be a driver with one year or less of such experience. ATA and several other commenters stated that by using this definition, the need for a grandfathering clause for drivers with between one and two years of driving experience would be eliminated. This would save employers and drivers time and money without sacrificing safety. In addition, employers would no longer have the burden of ensuring that an individual claiming eligibility for the grandfathering provisions is actually eligible, and Certificates of Grandfathering would not be necessary.

Several commenters recommend a definition based on miles or hours that a commercial vehicle has been driven. The proposed definition does not allow for quantifying operating hours or miles. Several commenters stated that safety comes through practical application of knowledge learned and improves with experience. If experience is quantified with actual miles or hours of operation in a vehicle, then a driver is more likely to develop and refine safe operating practices. Conversely, without a quantifying measure, one could not determine how much operating experience a CDL holder would have who occasionally operated a CMV within the two year time period. Under this quantifying measure, the grandfathering clause may not be necessary.

TCA believes that "carriers should only have to train drivers newly entering the industry. A review of the preamble to the rule demonstrates clearly that FMCSA's proposal to require training for all drivers in the industry for less than one year was based on the arbitrary comments it received in response to the ANPRM and public meeting and not based on any scientific study. In TCA's opinion, there is no scientific justification." The IBT, however, recommends that all drivers with less than two years of driving experience be subject to the mandatory training requirements and that drivers with less than five years experience be required to receive written information on the subject matter covered in training.

Several comments were received regarding the grandfathering provision proposed at § 380.505 in the NPRM. For example, CSS recommends that an individual must certify and provide evidence in order to be grandfathered. CVSA believes that a few items should be changed in the grandfathering clause requirements. The recommendations include: (1) Altering § 380.505(b)(3), which as proposed read, "No suspension, revocation, or cancellation of his/her CDL," to include the term disqualification; (2) including a definition of the term "at fault"; (3) changing § 380.505(c)(1) from "Is regularly employed in a job" to "Is employed in a job'; and (4) giving the employer the choice of either grandfathering a driver, if he or she meets the requirements, or requiring the driver to attend an entry-level training course. CVSA also remarks that a grandfathered driver is required to prove that he or she meets the grandfathering requirements before an employer can allow him or her to operate a CMV, while the entry-level driver is allowed to operate a CMV for 90 days before receiving the required training. CVSA believes the standard should be uniform and consistent.

AMSA recommends allowing eligible drivers to waive the training requirements through the grandfather provision for 14 or 16 months following the effective date of the rule to allow for an adequate time to communicate the grandfather provisions to potential drivers and to give carriers the time necessary to establish internal certification and reporting systems.

FMCSA Response: FMCSA believes that operating experience helps CMV drivers reduce crashes caused by driver error. In today's final rule, the agency adopts the ATA's comment to change the definition of entry-level driver to a driver with less than one-year experience operating CMVs. The agency believes safety will continue to be served by allowing only one year of experience rather than two years of experience. FMCSA will also have a much simpler rule for employers to follow. FMCSA has no reason to believe based on comments and other available data that defining an entry-level driver as one year or less will have a negative impact on safety.

The agency also agrees with the ATA that a grandfather provision is unnecessary, in view of the decision to change the definition of entry-level driver to a driver with less than one-year experience. The change in the definition of entry-level driver will reduce the burden on employers to train currently employed drivers.

The agency believes an employer can more readily determine if a driver is an entry-level driver from the one-year experience criteria than by counting hours or miles driven, as suggested by the Future Truckers of America, CVTA, NEI, and Tri-State. The employer may not have access to accurate information on hours or miles driven by the driver.

The NPRM contained the requirement that the driver "is regularly employed in a job" to ensure that drivers have adequate experience in order to qualify for grandfathering. Upon further reflection of the comments by CVSA and AMSA, FMCSA has decided to eliminate the grandfathering provision from the final rule. However, the agency still must specify who is a currently employed entry-level driver for today's final rule.

Therefore, drivers that began driving CMVs between 10 months before today's final rule and the effective date will be considered currently employed entry-level drivers subject to today's final rule and must obtain the training required by this rule no later than 90 days after the effective date of the rule. These drivers are permitted to operate a CMV during the 90-day period pending the completion of training. A student entry-

level driver, an individual who will begin operating a CMV in interstate commerce after the effective date of this final rule July 21, 2004, must receive the minimum training required by this action before driving a CMV. Thus, all student drivers will be subject to this rule after its effective date.

After the effective date, a driver or potential driver having less than one year experience operating a CMV for which 49 CFR part 383 requires a CDL must receive the training required by this subpart before operating a CMV defined in § 383.5 in interstate commerce.

Entry-Level Driver Training Topics—General

The training topics covered in the proposal were driver qualification, hours of service, driver wellness, and whistleblower. In general, CVSA believes that the listed training requirements may have merit on their own. However, it does not believe the topics address all of the training areas necessary for an entry-level driver. CVSA suggests that a training program for entry-level drivers should include a minimum required number of hours of training in parts 383, 391, 392, 393, 395, and 396. CVSA also suggests that the training program include skill training. CVSA realizes "that some of these areas may be covered while preparing for the CDL tests, but if the objective is to improve the safety of our highways, reinforcing the safety regulations will only do more to help us achieve our goal."

FMCSA Response: CDL tests cover driving skills and the driver-applicable parts of 49 CFR parts 392, 393, and 396 of the FMCSRs. Part 392 is entitled "Driving of Commercial Motor Vehicles." Part 393 is entitled "Parts and Accessories Necessary for Safe Operation" and part 396 is entitled "Inspection, Repair, and Maintenance." The Interstate Commerce Commission, another predecessor agency of the FMCSA, based each of these three parts on "State motor vehicle laws and regulations * * *" *See* the NPRM for these parts of July 8, 1936 (1 FR 738). Also, 49 CFR 383.111(a) requires each of these parts be covered in the CDL knowledge test.

The agency does not believe mandating hours for training will achieve the desired goal of the agency, performance-based regulations. An employer or training provider able to train a potential driver in less time than mandated may believe it must fill in extra material that will be burdensome to the driver and employer, but may not raise the driver's safety to any measurable extent. The FMCSA has included training in Parts 391 and 395 of the FMCSRs, because training in these areas will be most beneficial to entry-level drivers who will operate in interstate commerce.

The agency believes today's final rule and the other FMCSA safety program initiatives discussed elsewhere will improve overall entry-level driver safety. These include the agency's graduated licensing rulemaking, the MCSAP program, its crash causation study (which may assist in determining the need for future driver training topics), its new motor carrier entrant program, and its active CDL fraud program.

In addition, FMCSA notes that there are other Federal requirements that address security-related training, which will benefit entry-level and other CMV drivers. These include: (1) The Research and Special Program Administration's security awareness and in-depth security training requirements at 49 CFR 172.704; (2) the hazard communication program training required by the Occupational Safety and Health Administration of the Department of Labor (29 CFR 1910.120 or 1910.1200) and the Environmental Protection Agency (40 CFR 311.1); and (3) LCV training requirements in 49 CFR 380.201 through 380.205 published on March 30, 2004 (69 FR 16722). Although entry-level personnel are not eligible to drive LCVs, motor carriers that operate these vehicles may well extend security training to the rest of their driver population.

These programs and requirements will result in improved entry-level driver highway safety in the CMV industry and will help to improve the safety of those seeking to drive CMVs in the future.

Driver Qualification

The IBT supports the inclusion of driver qualifications as a new training topic. The IBT explains that on the issue of driver qualifications, many drivers are unfamiliar with or misunderstand the medical qualifications required by the FMCSA. This problem is exacerbated by the fact that these qualifications may change periodically. For example, changes have recently been made regarding cardiovascular and diabetes requirements, and the conditions of drivers themselves will change over time. In this respect, the IBT thinks entry-level drivers would benefit from an explanation of the requirements and the importance of being aware of current requirements. In fact, the IBT suggests that drivers would also benefit from continuing training and updates in this area.

FMCSA Response: The FMCSA agrees with the IBT that many drivers are unfamiliar with or misunderstand the required medical qualifications. The agency published a final rule on October 5, 2000, in the **Federal Register** (65 FR 59363) which updated on one form the instructions for performing and recording physical examinations, the medical examination report, the instructions to the medical examiner, the advisory criteria, and the medical examiner's certificate. The consolidated form contains information on cardiovascular conditions and diabetes which should be included as part of a training presentation on driver qualification requirements. Drivers will be better informed on medical qualification requirements through a combination of the revised medical form and the training requirements in today's final rule.

The types of subjects employers should cover include the following medical topics: Loss of a limb; impairment of a limb; diabetes mellitus standard for drivers currently requiring insulin for control; cardiovascular disease standards for conditions known to be accompanied by syncope, dyspnea, collapse, or congestive cardiac failure; respiratory dysfunction standards; procedures for the clinical diagnosis and treatment of high blood pressure; standards for rheumatic, orthopedic, muscular, neuromuscular, or vascular disease; epilepsy standards including conditions likely to cause loss of consciousness; psychiatric disorders including mental conditions which affect the driver's operation of the CMV, vision standards, hearing standards, and diagnosis of alcoholism as a disease; alternative physical qualification standards for the loss or impairment of limbs; and vision and diabetes exemption program requirements.

The following drivers must be medically examined: new drivers, drivers with expired medical cards, and drivers whose ability to perform their normal duties has been impaired by a physical or mental injury or disease.

Additional types of subjects employers should cover in driver qualification should include the following: A discussion of driver qualification standards under § 391.11, driver responsibilities under § 391.13, and disqualifications based on various offenses, orders, and loss of driving privileges under § 391.15.

Hours of Service

The IBT strongly supports training in hours-of-service regulation. Given the

recent changes to the regulation, IBT agrees that drivers would benefit from instruction on the requirements set forth in the regulation. ABA recognizes that hours of service of drivers is certainly an important element of training for entry-level drivers, but it believes that fatigue management is an element of basic hours-of-service training and should not be treated as a separate item or section for training purposes. The NGWA believes training may already exist for hours-of-service compliance. They want to know whether FMCSA will be adopting different rules and application in this area, and if so, what would it be.

FMCSA Response: The FMCSA has shown that crashes occur as a result of CMV driver error caused by inattention. Inattention can be the result of driver fatigue. Hours-of-service training should teach fatigue prevention strategies and the causes of fatigue. Hours-of-service training will help the driver learn how to maintain good sleep hygiene. Training should include the new hours-of-service regulations for truck drivers. Motor carriers began complying with the new rule earlier this year.

The FMCSA agrees with the ABA that fatigue management should be a part of hours-of-service training. Today's rule lists fatigue management as one example of what should be included in hours-of-service training. The others would include: the hours a driver is allowed to drive and work each shift; the mandatory off-duty times between shift periods; record of duty status preparation and filing; and exceptions to the rules.

The FMCSA is unaware of the specific HOS training that the NGWA references in its comment. The NGWA, however, may use any training it believes complies with the intent of this final rule to teach interstate CMV drivers how to comply with the requirements of 49 CFR part 395.

Driver Wellness

Driver wellness is another entry-level training topic. Most commenters are strongly opposed to the addition of this topic. Specifically, commenters question how this topic falls under the auspices of DOT and FMCSA. Commenters argue that this topic oversteps the agency's bounds with respect to individual driver privacy. For example, CRMCA/CRPA states, "while driver qualifications, hours of service, and whistle blower protection are valid areas of training, driver wellness, including personal behavior of diet and exercise, although important, is not within the purview of the FMCSA." NGWA asks, "On what legal grounds do you [FMCSA] justify the invasion of individual privacy to regulate employees' non-working time?" ABA criticizes the addition of this training, claiming that part 382 already mandates drug/alcohol training. Requiring further training in this area is repetitive and costly with no additional benefit. Training regarding the monitoring of specific medical conditions is best left to medical professionals.

The IBT supports the new training and comments that driver wellness is a very important issue to the IBT and its members. The IBT believes that driver welfare can be improved with training and instruction on the health threats faced by long-haul drivers, such as heart disease and diabetes, as well as the connection between those medical conditions and the potential for disqualification. The IBT explains that if drivers more fully understand both the health risks and the risk of job loss, many preventable diseases could potentially be avoided.

FMCSA Response: The agency's authority to require entry-level driver training on driver wellness can be found in 49 U.S.C. 31131, 31133, and 31136, in addition to ISTEA Sec. 4007(a). Sec. 31131(b)(3) states that Congress finds "enhanced protection of the health of CMV operators is in the public interest" and Sec. 31133(a) provides in relevant parts that the agency may:

(8) Prescribe recordkeeping and reporting requirements;

(9) Conduct or make contracts for studies, development, testing, evaluation, and training; and

(10) Perform other acts the Secretary considers appropriate.

Sec. 31136 specifically requires that the FMCSRs ensure that driving conditions do not impair the driver's physical condition.

The agency agrees with the IBT that driver welfare could be improved with training and instruction in many areas, including heart disease and diabetes. The purpose of driver wellness training is to provide medical information to the driver so that the driver can make informed life style choices. The agency is not attempting to regulate a driver's off-duty activities. FMCSA respects the fact that the driver may have his or her personal idea on the meaning of maintaining a healthy lifestyle. Moreover, this training does not require drivers to self disclose personal medical information to anyone. Nonetheless, FMCSA recognizes drivers who operate CMVs cross country may be away from their primary care providers a substantial part of the year and can benefit substantially from a heightened understanding of driver wellness issues.

Driver wellness topics could include stress, sleep apnea, how to maintain healthy blood cholesterol, blood pressure, and weight, as well as the importance of periodic health monitoring and testing, diet, and exercise. Many of these items could also be combined with the driver qualification training requirements that require a doctor to inquire about and test for numerous physical conditions. Driver wellness, however, should inform the driver what should be considered on a daily and monthly basis to maintain a healthy lifestyle. For example, in discussing topics about blood pressure, diet, and exercise, an employer may want to address the benefits of a healthy lifestyle, but also mention that the medical qualification requirements are written in terms of minimum standards for safe driving, including guidelines for blood pressure and diabetes mellitus.

The current requirement in § 382.601 to provide a policy on the misuse of alcohol and use of controlled substances does duplicate the proposed requirement in 380.503(a) to provide training in Part 382 drug and alcohol testing. Because training in drug and alcohol testing is already required in § 382.601, the FMCSA has removed that requirement from the required wellness training in today's final rule.

Whistleblower Protection

The last proposed entry-level training topic was whistleblower protection. Several commenters remark that there are other methods for drivers to learn about whistleblower protection besides instituting new training. For example, TCIA comments that training on this subject already exists in one form or another. Because the protection already exists by statute, TCIA also believes it is redundant to require that documentation of this training be placed in the driver qualification file. Brown-Line, Inc. comments that a statement read and signed during orientation would accomplish the same goal as training. ABA suggests that the whistleblower provision does not appear to fit into this rulemaking action.

The IBT, however, agrees that drivers should be made aware that whistleblower protections exist, and also be made aware of the exact nature and extent of the protections offered.

The NGWA believes training may already exist for OSHA (Occupational Safety and Health Administration) compliance with whistleblower protection. It wants to know whether FMCSA will be adopting different rules and application in this area, and if so, what would it be.

FMCSA Response: The agency agrees with the IBT that drivers should be aware that whistleblower protection exists, and also be made aware of the exact nature and extent of the protections offered. Training informs the driver and other employees of the right to question the safety practices of an employer without the employee's risk of losing a job or being subject to reprisals. The requirement allows an employer to use existing training if it meets the requirements of § 380.503. The agency believes that a statement read and signed by the employee may not give the employee the complete understanding that can come from training. Acceptable alternatives include training provided by a school and exposure of the entry-level driver to a professionally-prepared audio or video covering the required topics.

The FMCSA is unaware of any specific OSHA training that the NGWA refers to in its comment, other than the OSHA "Truck and Bus Poster" number 3113, available from OSHA. The NGWA, however, may use any training it believes complies with the intent of this final rule to teach interstate CMV drivers how to meet the whistleblower requirements of 49 U.S.C. 31105 and the Department of Labor's rules in 29 CFR part 1978 about how to send in a complaint blowing the whistle on a violator.

Answers to Questions About Other Training Areas

In the NPRM, FMCSA requested comments about entry-level training in other areas such as operation of fire extinguishers. ATA responds that motor carriers typically cover topics like fire extinguisher training in their general safety programs. Requiring such training is not necessary. However, NGWA supports fire extinguisher training.

FMCSA Response: FMCSA agrees with the ATA that many employers already cover fire extinguisher training in their general safety programs. Therefore, FMCSA has not mandated fire extinguisher training in this final rule.

Responsibility To Conduct Training

NGWA asks, "Precisely what entity will be considered appropriate to conduct the training?" This commenter asks whether the employer is required to fund the training done by an outside entity, or instead may conduct the training. It also asks whether training offered by other motor carrier outlets would be sufficient to fulfill the requirement.

TCIA considers it extremely important that their member companies have the ability to administer and implement the training. TCIA states that without this ability, this entire proposed mandate will become extremely cumbersome, and difficult to comply with. Therefore, TCIA requests that the authority to conduct the mandated training be retained by the employer.

FMCSA Response: This final rule allows the employer considerable latitude in determining what entity can provide the required training. Examples include the employer, a training school, or a class conducted by a consortium or association of employers. The question of who pays for the required training is an employer/employee issue. FMCSA has no ability to pay for training because the Congress did not appropriate funds for that purpose.

FMCSA believes most employers will bear the training costs for currently employed entry-level drivers. Most entry-level drivers, however, will probably bear most of the training costs after October 18, 2004, because the FMCSA believes most employers will not hire a driver unless the entry-level driver has had the training by a third party training provider's school.

Employer Recordkeeping Responsibilities—General

Under the rule, several provisions establish new recordkeeping responsibilities for employers. For example, employers must maintain a proof of training certificate. CVSA asks:

> What safeguards are available to prevent the falsification of the training certifications? How long are the third party training providers required to maintain records on their students? What is the reason for requiring third party trainers to provide the original and a copy to the driver? Why can the driver not be responsible for making their own copies?

FMCSA Response: The FMCSA has made specific changes to clarify today's final rule. The first change ensures that FMCSA places requirements only on employers and drivers. Another change is the training certificate now contains the name, address, and telephone number of the training provider. The final rule has removed the proposal for copies to be made by a specific entity or person. Civil penalties are available for violations of 49 CFR 390.35(b) and (c). The employer may contact the training provider if he or she has a question about the authenticity of the training certificate provided by the driver. FMCSA considers the civil penalties and the ability of the employer to contact the training provider to be sufficient safeguards against falsification.

Third party training providers are not subject to the jurisdiction of the agency. Therefore, the training providers may implement their own recordkeeping requirements. The FMCSA has changed the final rule to require employers to ensure that drivers obtain a training certificate if the driver meets the requirements to obtain an original certificate by a training provider.

Training Documents Should Follow Driver

Daecher and ABA both comment that training and the training certificate should follow the driver. If a driver completes training that meets the minimum requirements specified by the agency, he or she should not be required to be retrained by a subsequent employer. ABA explains that proper documentation of previous training should be provided to the new employer and should be maintained in the driver's qualification file. A employer may choose to retrain the driver at its discretion.

FMCSA Response: Today's final rule allows a subsequent employer to accept a copy of a training certificate from a previous employer or other training provider. The certificate or diploma must then be maintained in the driver's personnel or qualification file. The rule does not require the employer to retrain a driver who has received the training required by § 380.503 and who has a training certificate meeting the requirements of § 380.515.

Paperwork Burden/Recordkeeping

Four commenters address the paperwork and recordkeeping requirements in the proposed rule. NRMCA agrees that the four training subjects are valuable topics for entry-level drivers, but believes that "requiring employers to record and file documentation of training on these subjects would only create more costs, paperwork and administrative burdens to employers in our industry." Similarly, a commenter involved in school bus transportation states that time spent on recordkeeping interferes with a company's ability to perform its duties.

NRMCA, PMAA, and CRMCA/CRPA object to the proposed requirement that training records be kept for three years after the driver's employment has ended. These commenters cite the high turnover rate in their industry and state that this requirement would create a burdensome amount of paperwork.

FMCSA Response: FMCSA is requiring the employer to record and file documentation of training on these subjects so that the employer may

demonstrate that the employer's entry-level drivers received the required training. The employers subject to this rule already must have driver qualification or personnel files to store the documents required by §§ 382.401, 383.31, 383.33, 383.35, and 391.51. Record retention is not new to employers subject to the FMCSRs. For example, the records required by § 382.401 are required to "be maintained by the employer while the individual performs the functions which require the training and for two years after ceasing to perform those functions." *See* § 382.401(b)(4). In addition, the records required by § 391.51 are required to "be retained for as long as a driver is employed by that motor carrier and for three years thereafter." *See* § 391.51(c). However, FMCSA has considered the comments of NRMCA, PMAA, and CRMCA/CRPA and its need to review records during a compliance review at an employer's principal place of business. The FMCSA believes it will only need the employers to maintain training certificate records for, at most, one year after the driver leaves the employer's operation.

Thus, FMCSA believes it is reasonable to change the record retention period to as long as the employer employs the driver and for one year thereafter. This will allow FMCSA to adequately enforce the requirement.

Training Certificates

CVSA suggests two changes to make the training certificate a more effective document. First, the proposed requirements should be stated as "requirements in accordance with § 380.503." Second, CVSA suggests adding the driver's license number, the e-mail address of the training provider, and the date of issuance to the training certificate.

FMCSA Response: Section 380.515 now requires the training certificate to contain a statement that the driver has completed the training in accordance with § 380.503. The agency agrees that the date of issuance of the training certificate is important information to include on the training certificate and has added this requirement to the final rule. The agency disagrees that the driver license number should be added to the training certificate because the number may change if the driver transfers his or her CDL to another State. Likewise, the agency believes a training provider's email address is not necessary on the training certificate because it already contains the name, address, and telephone number of the training provider. The employer should have sufficient information to contact the training provider if he or she has a question about the authenticity of the training certificate. FMCSA believes it should prescribe only the minimum necessary to allow the employer to check the entry-level driver has received the training. The agency believes training providers will put this information on the form as a good business practice.

Effective Date and Compliance Date

In the NPRM, FMCSA proposed to make the final rule effective 60 days after the date of publication in the **Federal Register** and that employees who do not qualify for grandfathering must receive the required training within 90 days of the effective date. The CVSA, NGWA, NSTA, and McLane believe that two months will be an insufficient period of time to develop a compliant training curriculum, particularly if no new Model Curriculum is issued by FMCSA on or before the effective date of the rule. NSTA believes it will take six months to a year from the time the final rule is published for it to develop high-quality training materials and educate instructors to deliver new training for school bus drivers.

NSTA, NGWA, McLane, and TCA state that requiring drivers who are not grandfathered to receive the training within 90 days would strain the resources of many employers, depending on the time of year and the size and scope of the carrier's operations. These commenters request at least six months within which to comply with the training requirement.

TCIA requests that the grace period be no less than 90 days, stating that "the ninety day window to conduct, document, and record the additional training laid out in this proposal is an absolute necessity."

Daecher believes that a 90-day period is adequate for providing the required training.

FMCSA Response: The agency disagrees with TCIA, CVSA, NGWA, NSTA, and McLane that employers need more time to develop training materials. The agency believes training materials and courses on the four areas are commercially available today. Motorcoach and private contractor school bus drivers are subject to the same driver qualification file requirements as truck drivers, and the hours-of-service regulations for motorcoach and school bus drivers did not change earlier this year, as they did for truck drivers. Thus, the training commercial sources have developed for HOS and driver qualification are already available for the motorcoach industry and will not need to be further developed.

The agency also agrees with Daecher that a 90-day period for providing the training is adequate because only those CMV drivers that began operating in interstate commerce within the past 10 months are subject to training within this 90-day grace period. An entry-level driver that began driving CMVs in interstate commerce 10 months before today's final rule will have one-year's experience on the effective date of this rule, thereby subjecting the entry-level driver to this rule's training requirement. Such a driver must be trained within the 90-day grace period. Other entry-level drivers that began driving CMVs in interstate commerce less than 10 months before today's final rule up to the effective date will also have to have the training within the 90-day grace period. A "student entry-level driver" who will begin operating a CMV in interstate commerce after the effective date of this final rule July 21, 2004, must receive the minimum training required by this action before driving a CMV. Thus, all student drivers will be subject to this rule after its effective date.

Enforcement

Three commenters ask how FMCSA plans to enforce the new requirements. NSWMA is concerned about the employer's responsibility for maintaining evidence of the training content if its drivers obtain the required training at a driver training school. The commenter asks whether the carrier must keep a copy of the training manual from each training school.

CVSA comments that a roadside enforcement officer would not have access to any document that indicates the driver is an entry-level driver. That information would only be available through a compliance review or safety audit.

FMCSA Response: FMCSA is not requiring the employer to keep a copy of the training manual from each training school. Agency field staff will verify driver entry-level training by reviewing the training certificate in the employer's possession during safety compliance reviews and new entrant safety audits of motor carrier records. In addition, today's final rule requirements will be added to the checks the agency's staff already does for compliance with hazardous material training requirements required by the Research and Special Programs Administration (RSPA) under 49 CFR part 172, subpart H (§§ 172.700 through 172.704) that are similar in form to what today's final rule requires. RSPA requires employers to

check the content with the training provider and documentation that each person has received the training.

Economic Analysis

All of the nine commenters that addressed the economic analysis raise concerns about the estimated costs and benefits in the NPRM and about the methodology used in estimating those costs and benefits.

Brown Line, Inc. says that mandated training of all new entrants would create an unnecessary burden on motor carriers. TDI/CDI believes that extending its training program hours "would cause severe economic stress to trainees who are training usually away from home, as well as taking care of family." NSWMA, C. R. England, Inc., TCIA, UMA, NGWA, and CVSA, all raise questions about the methodology used by FMCSA in estimating the costs and benefits of the proposed rule. NSWMA says that FMCSA appears to have come up with numbers to meet a predetermined outcome instead of using data based on facts and science. ATA questions how FMCSA plans to evaluate the true impact of the regulation given its estimate that 285 crashes would have to be avoided each year for the rule to be beneficial. C. R. England raises numerous questions and concerns related to the economic evaluation. It questions what crash statistics were evaluated, the sample size, number of programs analyzed, how they were selected, and how the crashes were correlated with the training received. C. R. England states that its average cost per crash is at least 30 percent less than FMCSA's assumed cost.

C. R. England also questions the study cited to support the return on investment (ROI). England stated that the study cited to support the ROI (Schneider National, Inc.), indicated that driver training reduced accidents by 40 percent and used training specific to hazardous driving conditions. It believes this is not the type of training FMCSA proposed and therefore the study should not be used to support the ROI for the proposal. It also states that the ROI is based on the assumption that implementing this rule would deter between 285 and 315 truck-related crashes each year, but that it was never established that the type of training being required has any direct effect on these specific types of accidents. It states that auditing costs were not included in the ROI calculation.

C. R. England further states that if it was able to eliminate all avoidable crashes in a year it would only recover 8 to 13 percent of the cost of implementing the proposed training and that the funds expended could be used more effectively in other ways to prevent crashes.

UMA points out that because no motorcoach driver schools exist, and because only the largest motorcoach companies have in-house driver training programs, costs to its smaller members would be high. UMA states that there was a disconnect in the data used to justify inclusion of the motorcoach industry because that data included transit crashes and it is FMCSA's intent to exempt transit buses from the proposed rules.

TCIA says that because its member drivers are trained arborists their estimated hourly rate is much higher (in the $20 to 25 range) than the rates used by FMCSA, and further that TCIA members were not even considered in the NPRM's cost estimates.

CVSA says that FMCSA's hourly estimates are woefully inadequate because most training programs range from two to nine weeks depending on the category of training.

FMCSA Response: FMCSA believes that clarifying language added to this final rule will alleviate some of the specific concerns and questions raised by Brown Line, Inc., on mandating training for all new entrants that would create an unnecessary burden to carriers. Additionally, FMCSA revised its economic evaluation in developing the final rule (changes are documented in the section entitled, "Summary of Costs and Benefits" elsewhere in this document), and these changes, which affected the total costs and threshold analysis of the rule, should alleviate some concerns. Brown Line, Inc. did not offer specific examples or data on what it deems to be an unnecessary burden and as a result, FMCSA was unable to review its evaluation or consider specific changes in response. Likewise, the agency was unable to review its evaluation or consider specific changes in response to TDI/CDI comments on extended training program hours causing severe economic stress to trainees who are training away from home. TDI/CDI provided no supporting data or specific examples.

In response to CVSA's comment that FMCSA's hourly estimates are woefully inadequate because most training programs range from two to nine weeks, as well as TDI/CDI comments, FMCSA has stated that it is not mandating a specific number of training hours as part of the final rule. The 10 hours of additional training anticipated for entry-level truck, motorcoach, and school bus drivers, are estimates that were derived for the purposes of estimating the economic impacts. They were based on guidelines established by the PTDI for its instructors on the amount of time it suggests should be dedicated to teach this content and conversations with the FMCSA CDL program staff. It is conceivable that the actual time required for an individual employer or its trainer may vary according to individual operating circumstances.

The FMCSA stated in its evaluation that while "the impact of truck drivers" training is presumed to be positive," it also noted that "a few studies have revealed ambiguous results" with regard to the relationship between driver training and safety. Many stakeholder comments to the ANPRM stated or implied that the relationship is positive, and a number of case studies have estimated a positive relationship. However, given the ambiguity of past research results, the FMCSA approached the benefits analysis in terms of the number of crashes the proposed rule would have to deter to be cost beneficial (or what is sometimes referred to as "threshold analysis").

Responding to C. R. England's statement "that its average cost per accident is at least 30 percent less than FMCSA's assumed cost," and TCIA's assertion that "because its members" drivers are trained arborists their estimated hourly rate is much higher (in the $20–25 range) than the rates used by FMCSA," the agency's preliminary regulatory evaluation used average crash cost statistics and wage rates taken from national-level studies and/or data sources. Specifically, the agency obtained crash cost data from a study entitled, "Costs of Large Truck- and Bus-Involved Crashes," developed for FMCSA by Dr. Eduard Zaloshnja, Dr. Ted Miller, and Rebecca Spicer, which comprehensively estimated crash costs as a function of the medical, emergency services, property damage, lost productivity and pain, suffering, and quality of life-related costs associated with large truck and bus crashes. The Zaloshnja, Miller, and Spicer study estimated these costs for all large truck and bus crashes at a national level. In its NPRM evaluation, FMCSA estimated the anticipated impacts of its proposal to society, which includes the affected industry, state and local governments, and the traveling public. Given this focus, FMCSA usually initiates these types of evaluations at the national level, and generally uses, when available, average wage, crash, and crash cost statistics that represent the industry and society as a whole. As such, FMCSA is not able to estimate the impacts of a rule to very small subsets of the industry, such as a particular carrier or a unique segment, and is

unlikely to use estimates provided by a single organization in its calculations, unless the agency is unable to locate more nationally representative data. FMCSA does not dispute that C. R. England's crash costs may be 30 percent less than FMCSA's national level estimates or that TCIA's average wage rates may be higher than the industry as a whole.

Responding to UMA's statement that there was a disconnect in the data used to justify inclusion of the motorcoach industry because that data included transit crash data, again, FMCSA generally uses national-level crash cost estimates to evaluate the impacts of its rules on society. The crash cost estimates used in this evaluation are aggregated averages, and are not useable if FMCSA tries to exclude one particular subset of the larger industry. As such, the agency reports the average crash costs for crashes involving large trucks. Additionally, contrary to UMA's belief that the crash cost data were used to justify the motorcoach industry's inclusion in the rule, the crash cost data were simply used to estimate the level at which the rule would become cost-beneficial if implemented (based on the average cost of a large truck crash). FMCSA uses such an approach (sometimes referred to as threshold analysis) because of the above-noted uncertainty with trying to estimate specific, quantitative benefits of a training-related rule. This approach helps the reader and policy makers gain a broader understanding of how likely the rule is to be cost beneficial, given the number of crashes motor carriers would have to avoid. As noted above, the agency included the "private sector" portion of the motorcoach industry in its original training adequacy study, as well as in the NPRM and in the final rule, because the agency had interpreted that Congress intended to include only "private sector efforts."

Regulatory Flexibility Act—Small Business Concerns

The NGWA strongly disagrees with agency statements that its NPRM imposes a modest burden on small entities because it largely proscribes the actions of drivers rather than motor carriers. NGWA states the small business owner-operator is still the person doing the paperwork. While that individual is doing paperwork, he or she cannot be working safely at the drill site and creating revenue. Also, NGWA cites FMCSA's statement that there are no current state or tribal regulations that overlap with the proposal, asking "How do you plan to ensure that if various states and tribes adopt similar statutes, they will be uniform with the federal regulations—avoiding the likelihood of misinterpretation by enforcement officers?'

UMA states that FMCSA's assumption in its Regulatory Flexibility analysis that only companies with six or fewer drivers are to be considered small businesses is in error. According to UMA, the Small Business Administration (SBA) considers motorcoach companies to be small based on the North American Industry Classification System (NAICS) coding. Under the NAICS codes (Subsector 485) a motorcoach company is considered to be a small business if its annual revenues are $6 million or less. For truck companies (Subsector 484) the threshold is significantly higher at $21.5 million. The number of employees is not used by the SBA in the determination for small business "size." According to UMA, if the SBA definitions are incorporated into the NPRM size determination, the universe of businesses affected becomes much greater. UMA and the SBA have determined that as much as 95 percent of the motorcoach industry meets the SBA definition of "small business."

FMCSA Response: In reference to NGWA comments about the inclusion of employer paperwork costs, the FMCSA did estimate the "opportunity cost" of this rule to the driver (whether owner-operator or not). This is the cost of the driver/owner-operator participating in training, and thereby unable to use this time to generate revenue for the company. Traditional estimating techniques for opportunity cost base these on an hourly cost equal to the driver's wage rate. In the NPRM analysis, the agency used a national-level average wage rate for truck and bus drivers, including fringe benefits. The wage data make no distinction between those drivers who are owner-operators and those drivers working for an employer.

In response to the UMA comment, "FMCSA's assumption in its Regulatory Flexibility analysis that only companies with 6 drivers or less are to be considered small businesses is in error," FMCSA has revised its regulatory flexibility analysis to evaluate the impact on companies by SBA's definition using annual revenue class. FMCSA presents the results elsewhere in today's final rule under the heading "Regulatory Flexibility Act."

The agency's authority to promulgate entry-level driver training requirements can be found in 49 U.S.C. 31131, 31133, and 31136, and Sec. 4007(a)(2) of ISTEA. States do not have the authority to preempt Federal safety regulation of employers engaged in interstate commerce. The agency recognizes the right of Indian tribes to promulgate training requirements for entry-level drivers of their tribe while these drivers are operating on Indian territory. However, these tribal entry-level drivers are subject to FMCSA jurisdiction if they operate in interstate commerce.

Miscellaneous

CVSA suggests that the proposed rules should be located in part 383, which contains other CDL driver related regulations. Locating these rules in a new part 380 will create confusion for both enforcement officials and industry, according to CVSA. CVSA also suggests correcting a typographical error in § 380.509 by changing "the employer or potential employee" to "the employer or potential employer."

FMCSA Response: FMCSA is correcting the typographical error. FMCSA, however, does not agree with the CVSA's comment about co-locating the training requirements in 49 CFR part 383. The training requirements are similar to the training requirements for drivers of longer combination vehicles that are located in 49 CFR part 380, and the agency believes this part should include all general driver training requirements.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FMCSA has determined that this action is a significant regulatory action within the meaning of E.O. 12866, and is significant within the meaning of the Department of Transportation's regulatory policies and procedures (DOT Order 2100.5 dated May 22, 1980; 44 FR 11034, February 26, 1979) because of significant public interest in the issues relating to CMV safety and training of certain CMV drivers. The final rule has been reviewed by the Office of Management and Budget under E.O. 12866.

The agency is adding § 380.500 to specify when employers and drivers must comply with this final rule. The effective date cited in the **DATES** heading at the top of this document is the date that the final rule amendments affect the current Code of Federal Regulations published by the Government Printing Office. Employers and drivers may begin to comply with this final rule on or before the effective date for this final rule.

FMCSA is making the effective date 60 days after the date of publication in the **Federal Register**. Drivers who first

began operating a CMV in interstate commerce requiring a CDL between 10 months before today's final rule and five months after today's final rule must receive the training required no later than the end of the five-month period. The agency will be using the **Federal Register**'s date calculation method and the date may be slightly longer depending upon whether a weekend or Federal holiday occurs at the end of the 90-day period.

After the five-month period, a driver or potential driver having less than one year experience operating a CMV for which 49 CFR part 383 requires a CDL, must receive the training required by this subpart before operating a CMV defined in § 383.5 in interstate commerce.

Section 380.500 is only necessary for a limited period until all affected employers learn about the new rule, begin complying with it, and the 90-day grace period have passed. Therefore, the FMCSA has added language to the **DATES** section that will only make this section effective in the Code of Federal Regulations temporarily from the effective date through June 30, 2005. After June 30, 2005, the Government Printing Office will remove this section from the Code of Federal Regulations. Thus, the October 1, 2005, edition and all subsequent editions of the Code of Federal Regulations will not contain § 380.500.

Summary of Costs and Benefits

Background

This final rule is required by the Intermodal Surface Transportation Efficiency Act of 1991. The FMCSA proposed that entry-level commercial drivers receive mandatory training in the following content areas: driver qualifications, hours of service of drivers, driver wellness, and whistle blower rights. This final rule will require an applicant to complete entry-level driver training that includes these four content areas and furnish a copy of the training certificate to the employer in cases where someone other than the employer provides the training. An employer could not allow an entry-level driver to operate a CMV on the public road in interstate commerce unless the driver has received the required training and the employer receives the documentation of training. The one exception would be within the first three months of the rule, when existing drivers with 12 months of driving experience within the industry would be allowed 90 days from the effective date to acquire the mandated training.

The FMCSA has conducted a regulatory evaluation of this final rule in accordance with Executive Order 12866, "Regulatory Planning and Review." The FMCSA estimates today's final rule to cost $26 million in the first year of implementation and $14 million annually thereafter (undiscounted). The higher costs in the first year are the result of this rule's impact on some existing drivers (*i.e.*, those with less than 12 months of experience), who must undertake the required training within the first 90 days of the rule's implementation. Total discounted costs of this rule are $121 million over 10 years. If the higher first-year costs are spread out evenly over the 10-year analysis period to achieve the same total discounted cost of $121 million, the average annual cost of the final rule is $16 million (undiscounted). The FMCSA derived this $16 million average annual undiscounted cost estimate so that it could estimate the number of crashes that would have to be avoided each year for the rule to be cost beneficial (*i.e.*, threshold analysis) and for use in the small business impact, or regulatory flexibility, analysis.

At an average cost per truck-related crash of $79,873 (including fatal, bodily injury, and property-damage-only crashes) in 2002 dollars, this final rule would have to prevent 201 truck-related crashes in each year of the analysis period to be cost-beneficial. For the 32,400 entry-level drivers that must receive training in any given year, the agency estimates this represents a 5-percent reduction in the anticipated crashes they would have had, if it assumes their crash risk is roughly equal to that of the industry average. Because the crash risk profile of entry-level drivers is likely to be significantly higher than the overall driver population (due to their lack of driving experience relative to all other drivers), it is reasonable to assume that less than a 5-percent reduction in crashes by this driver group would be required for this rule to be cost-beneficial. The 201 crashes represent five one-hundredths of one percent (or 0.05 percent) of the average total number of truck-related crashes reported annually (estimated at 445,000 in 1999 and 2000).

Analytical Revisions Between NPRM and Final Rule Stages

FMCSA notes here that its estimates of the costs associated with this rule have been revised since the issuance of the NPRM analysis. Specifically, while its estimates of the first year costs are higher ($26 million for the final rule versus $25 million in the NPRM), the total discounted costs associated with the rule are lower ($121 million for the final rule versus $173 million in the NPRM). The increase in first-year costs and decrease in total costs are due to several revisions made to the analysis as FMCSA obtained, or was presented with, additional or new information between the NPRM and final rule stages.

Regarding first-year costs, FMCSA initially failed to include the first-year costs associated with training existing drivers with less than 12 months of driving experience. Offsetting these additional costs, the agency removed the costs associated with training existing drivers with 12 to 24 months of experience previously affected by the "grandfather" clause as defined in the NPRM. Because the final rule eliminates this "grandfather" provision for drivers with 12 to 24 months of interstate commercial driving experience, FMCSA removed these costs from the analysis.

Regarding total costs, the agency had initially included in the analysis for the NPRM, the cost of training entry-level drivers operating both in interstate and intrastate commerce. Because the final rule specifies that only entry-level drivers operating in interstate commerce must comply with today's final rule, the agency adjusted downward its estimate of the number of entry-level drivers who must receive training under this final rule. Additionally, the final rule makes explicit that only non-governmental sector entities are subject to these entry-level training requirements, which resulted in a significant downward revision in the number of school bus drivers affected, because the vast majority work for local governments and the vast majority of school bus trips are intrastate in nature (*i.e.*, home-to-school and vice versa). This reduction in the number of affected drivers reduced the overall costs of the final rule. Additionally, the initial analysis included in the NPRM estimated the training that would be required for entry-level truck and motorcoach drivers at 10.5 hours. Because the final rule eliminated the instruction for alcohol and controlled substances testing, FMCSA reduced its estimate of the average number of training hours necessary to instruct entry-level drivers in the four content areas by one-half hour from 10.5 hours to 10 hours. Finally, because the entry-level training rule would apply only to school bus drivers employed by non-governmental entities (mostly contractors to local educational agencies), FMCSA increased the number of hours of training required for these drivers from 4.5 hours to 10 hours.

FMCSA provides a summary of costs in the next section. For a complete

discussion of the assumptions made, data used, and analysis performed in this regulatory evaluation, please refer to the docket, where the agency has placed a copy of the full regulatory evaluation.

Costs

The largest cost component of this rule is the cost to provide training to entry-level operators of trucks, school buses, and motorcoaches over 26,000 pounds GVWR. Training costs include both the direct cost to train drivers and the (opportunity) cost of drivers' time. The two key factors in estimating the training costs are the number of drivers who will need training and the training hours they will have to undertake.

The FMCSA estimates that employers or training entities will teach, on average, 10 hours of coursework to entry-level drivers of trucks, school buses, and motorcoaches in the four subject areas. FMCSA estimates the two content areas of driver qualifications and hours of service together would consume about 5.5 hours of training time (down from the 6 hours estimated in the NPRM when alcohol and drug testing training had been proposed). The driver wellness training would also consume about 4 hours, while FMCSA estimates coursework on whistle blower protection should consume about 30 minutes. FMCSA based the training hours estimate for all drivers on information provided in the instructor's guide for the Professional Truck Drivers Institute's (PTDI) accredited training courses, the instructor's guide for the Model Curriculum for motorcoach drivers, and discussions held with FMCSA CDL program staff in the Office of Safety Programs.

Using data from the Bureau of Labor Statistics (BLS), the total number of entry-level truck drivers entering the industry is estimated at 58,600 per year for the next 10 years, while the entry-level drivers required for growth and replacement for the school bus and motorcoach industry are estimated at 17,800 and 2,100 per year, respectively, also over the next 10 years. As is discussed below, only a certain percentage of these drivers must comply with today's final rule.

The BLS data make no distinction between those drivers operating in interstate commerce and those operating in intrastate commerce. Because the final rule specifies that its requirements apply only to entry-level drivers operating in interstate commerce, FMCSA adjusted the above estimates accordingly. Data obtained from the Motor Carrier Management Information System on the number of drivers operating in interstate commerce for FMCSA-regulated entities reveals that 78 percent of drivers were operating in interstate commerce, while 22 percent were operating in intrastate commerce. This is surely an overestimate of the number of drivers operating in interstate commerce as a percent of total drivers, because the MCMIS database only contains information on motor carriers required to register with FMCSA (generally those operating large CMVs in interstate commerce). Therefore, it does not adequately represent the population of motor carriers (and thus drivers) operating solely in intrastate commerce. Additionally, data from the 1997 Commodity Flow Survey indicate that 54 percent of shipments moved by for-hire truck (as measured in tons) traveled less than 50 miles (FMCSA presumes most of these shipments would be intrastate shipments). In the case of shipments moved by private trucks (again, as measured in tons), the percentage that traveled less than 50 miles was 79 percent. Given the above data, it is reasonable to assume that the ratio of interstate carriers to the total motor carrier population is closer to 50 percent, and that the breakdown of interstate drivers relative to the total driver population would also be closer to 50 percent. However, in cases where employers provide the training for their entry-level drivers, the FMCSA believes it is logical to assume that the motor carrier would plan to train a greater proportion of its entry-level drivers than that necessary to meet the short-term requirements of the regulation. Doing so provides the carrier with greater flexibility in scheduling freight and passenger movements, should the proportion of its interstate-based shipments and charters suddenly increase. At the same time, FMCSA believes that these carriers are highly unlikely to train 100 percent of their entry-level drivers to operate in interstate commerce if only half its revenue is generated by such business, because doing so would result in a sunk cost with little potential ROI. As such, FMCSA assumed in this analysis that on average carriers would train 75 percent of their entry-level truck and motorcoach drivers, thereby allowing them to operate in interstate commerce. Also, in using the 75-percent assumption, FMCSA ensures that it will not underestimate the number of entry-level truck and motorcoach drivers who will receive training as a result of this rule. With regard to whether the employer actually provides the training to entry-level drivers or the drivers themselves fund the training makes little difference from the perspective of this economic evaluation, because such costs represent transfers between one industry party and another. The goal of this regulatory evaluation is to estimate the impacts to society as a result of the rule's implementation. The group of industry participants to whom the costs apply is of lesser immediate concern (at least until the small business impact, or regulatory flexibility, analysis is performed). With regard to the training costs associated with this rule, it is likely that in some cases the employer will provide the training for its existing entry-level drivers and for those new drivers entering its workforce each year, whereas in other cases, employers might expect that new drivers who wish to work for them would have already acquired such training. With regard to owner-operators, they alone would most likely incur the full cost of training, given their dual roles as driver and company owner.

In estimating the number of entry-level school bus drivers affected by this rule, our March 24, 2004 (69 FR 13803) ANPRM withdrawal notice addressing interstate school bus operations of local educational agencies revealed that about one third of school bus drivers worked for non-governmental entities (or those that would be subject to this rule). However, not all of these drivers would be expected to receive training that would allow them to operate school buses in interstate commerce, because the number of non-home-to-school interstate trips by local education agencies represent less than 1 percent of all school district trips. And, as was the case with entry-level truck and motorcoach drivers, FMCSA assumed that a non-governmental employer would train one and one-half times more drivers than would be immediately required by this final rule, because this provides the employer with short-term flexibility in its operations, should the need for interstate school bus trips increase suddenly.

Therefore, in examining the total number of entry-level drivers potentially affected by this rule in any given year, FMCSA incorporates the adjustments discussed above. For entry-level truck drivers, a maximum of 43,950 (or 75 percent of 58,600) must comply, although a further adjustment is discussed below. For entry-level motorcoach drivers, the number is 1,575 (75 percent of 2,100). And for entry-level school bus drivers, the number is 85 (or one percent of the 32 percent of 17,800 entry-level drivers entering the industry each year, multiplied by 1.5).

Regarding entry-level truck drivers, an additional issue must be considered:

The number of entry-level truck drivers who graduate from training courses that already teach the content addressed under this final rule. In this analysis, FMCSA assumed that 30 percent of the applicable entry-level heavy truck drivers (or 13,185 of 43,950 total) would not need any additional training, as they are assumed to attend a PTDI or similar accredited training program (*i.e.*, PTDI accredited courses already include these content areas in their curriculum). FMCSA bases this assumption on information obtained regarding the number of accredited programs as a percent of total driver training programs. For the remaining 70 percent (or 30,765 entry-level truck drivers), FMCSA assumed that the potential drivers either receive training from a non-accredited training program or they receive informal training from the employers. Therefore, this 70 percent of entry-level truck drivers would require approximately 10 hours of training per driver on the four subject areas mentioned above. The total hours of training provided under the final rule for the entry-level heavy truck drivers is estimated at 307,650 hours per year. For those drivers who already receive some type of formal (yet non-accredited) employer-or third-party training, it is quite possible that employers (or third-party training providers) might reduce the amount of training time spent on other, non-required subject matter, so that the net increase in training per truck driver would be less than 10 hours. However, in the absence of specific information on the types of subject matter that training entities might omit from these training programs to offset the new training costs, FMCSA assumed a net increase of 10 hours for estimating the costs of this rule.

FMCSA assumes that the additional hours of training for an entry-level motorcoach driver would be 10 hours. The instructor's guide to the Model Curriculum for training motorcoach drivers includes 5 hours of logbook training but only about an hour on safety and wellness issues (including topics such as the correct lifting of heavy objects and identifying prohibited cargo). The FMCSA does not have information on the proportion of entry-level motorcoach drivers following training under the Model Curriculum. Therefore, the FMCSA estimates that 1,575 entry-level drivers of motorcoaches would require 10 hours of training on driver qualifications, hours of service for drivers, driver wellness, and whistle blower protection for a total of 15,750 hours of training per year.

Regarding entry-level school bus drivers working for non-governmental entities, this rulemaking will result in 10 hours of additional training for each entry-level driver. Therefore, for the 85 entry-level school bus drivers affected by this rule each year, FMCSA estimates a total of 850 hours of training per year.

To be conservative, FMCSA used a figure of $25 per hour of training in this analysis to calculate the direct costs of training (calculated via an average cost of $4,000 per training course divided by 4 weeks divided by 40 hours per week). This translates into $250 of direct training costs for a 10-hour course. The agency believes that this is a reasonable estimate of the total hourly cost to train drivers (whether or not the training is provided by the employer or a third party) because it falls well within the range of training cost estimates provided in comments to the ANPRM. In reality, employer-based training could very well be less than $25/hour in certain cases (*i.e.*, assuming new physical space is not leased by the employer to conduct the training, the training is self-directed by the driver, and/or the training is computer-based), but to be conservative the agency used the same figure whether the training was employer-or third party-based so as not to underestimate employer and/or driver costs. It is likely that some employers (and third-party providers) may take advantage of computer-based (*i.e.*, web-based, self-directed) training to provide entry-level drivers with the necessary instruction, since such training is generally less costly than more traditional classroom-style training in cases where many drivers must be trained. However, in the absence of estimates on the percentage of drivers that would likely utilize computer-based training methods, we assumed all would partake in more traditional (classroom-style) methods to obtain the necessary training.

To arrive at a truck driver's wage rate, FMCSA used a figure of $14.75 per hour, which is an average from three recent national wage/employment surveys (including the Current Population Survey). FMCSA added 31 percent to cover the cost of fringe benefits, an estimate developed in the Hours of Service of Drivers regulatory evaluation. (It is a weighted average of the fringe benefits for private and for-hire carriers, based on data from the ATA and the BLS.) The 31 percent increase brings total compensation to $19.32.

Regarding a motorcoach driver's wage, FMCSA used a figure of $9.98 per hour obtained from the BLS 2001 National Occupational Employment and Wage survey. This figure represents the 25th percentile wage estimate for an entry-level motorcoach driver and the agency used it because entry-level drivers generally earn at the low range of the industry wage standards. Again, 31 percent is added to cover the cost of fringe benefits, resulting in a total hourly wage estimate of $13.07 per hour.

Regarding a school bus driver's wage, FMCSA used a figure of $7.67 per hour obtained from the BLS 2001 National Occupational Employment and Wage survey. This figure represents the 25th percentile wage estimate for an entry-level school bus driver and the agency used it because entry-level drivers generally earn at the low range of the industry wage standards. Again, 31 percent is added to cover the cost of fringe benefits, resulting in a total hourly wage estimate of $10.05 per hour.

To get the total unit cost of training per hour (*i.e.*, including both direct training costs and the drivers' cost of time), FMCSA added the relevant estimate of the driver's wage rate for truck, school bus, and motorcoach drivers to the average hourly cost of training discussed earlier. For example, for an entry-level truck driver, the unit cost of training is $44.32 an hour ($19.32 of foregone driver wages plus $25 in actual training costs). For entry-level motorcoach drivers, it is $38.07 per hour ($13.07 of foregone driver wages plus $25 in actual training costs) and for entry-level school bus drivers, FMCSA estimates the total training cost at $35.05 per hour ($10.05 of foregone driver wages plus $25 in actual training costs).

Taking these hourly training costs for each type of entry-level driver (based on median wage rates and an average hourly cost of training) and applying them to the average 10 hours of training for each type of driver and the number of entry-level drivers in each category, the agency developed an estimate of total annual training costs of this rule.

To do so, FMCSA multiplied the hours of training required for each type of driver by the total number of drivers in that driver group per year by the applicable hourly wage rate to drivers in each group (including direct wage and costs of training). The result is an annual training cost of $14 million (after rounding) for the 32,400 entry-level truck, motorcoach, and school bus drivers affected by this rule.

Note however, that in the first year of the rule's implementation, currently employed drivers with less than 12 months of driving experience will be required to return for training in the four content areas specified above. Therefore, FMCSA expects an additional 32,400 drivers with less than

12 months of driving experience to return for training within 90 days of the rule's effective date. Because there is a 60-day period between today's final rule and its effective date, the percentage of drivers with 11 to 12 months of driving experience today (or 17 percent, assuming an equal distribution of new drivers each month) will become exempt from the rule's training requirements upon its effective date. Therefore, 27,000 entry-level drivers with 10 months or less of driving experience will be required to return for training within the first year of this rule. These 27,000 drivers represent 83 percent (or 10 of 12 months worth) of the original 32,400 entry-level drivers in the industry with less than 12 months of driving experience. The cost to train these 27,000 drivers is roughly $12 million in the first year (or 83 percent of the $14 million required to train all 32,400 new drivers in the first year of this rule). Note that in years 2 through 10 of the analysis period, the average annual training costs are just $14 million (undiscounted), or the amount required in training costs for 32,400 new drivers entering the industry in that year.

In addition to training costs for entry-level drivers, FMCSA estimated record-keeping costs for drivers or their employers who must file and retain a training certificate as proof that the training occurred. FMCSA had no data to determine what percentage of existing certificates would meet today's requirements, so it assumed all employers of entry-level drivers must receive and store a training certificate. The agency recognizes that in many cases a new training certificate may not have to be issued (if the existing certificate contains the necessary information regarding the supplemental training required in the four content areas discussed above). The Paperwork Reduction Act analysis for this rule estimates that the handling costs for each driver-training certificate is 10 minutes per year. Using the average hourly wage rates for new truck, motorcoach, and school bus drivers discussed above (including fringe benefits), and dividing by 60, FMCSA obtains a "per minute" wage rate with which to estimate record-keeping costs. To a per minute wage rate of $0.32, $0.17, and $0.22 for entry-level truck, school bus, and motorcoach drivers, respectively, FMCSA multiplied 10 minutes of record-keeping costs per year for the applicable 32,400 drivers entering the industry each year (30,765 truck, 1,575 motorcoach, and 85 school bus drivers). The result is an annual record-keeping cost of roughly $100,000 (undiscounted, after rounding). However, as was done for the training costs, the record issuance and filing costs of the rule will be 83 percent higher in the first year, given that there will be an additional 27,000 drivers with 10 months or less of driving experience for whom training certificates will be issued in the first year. (In addition to the 32,400 new drivers for whom FMCSA assumed employers or training entities must issue training certificates.) As a result, first-year record issuance and filing costs will equal almost $200,000, and annual record issuance and filing costs thereafter will be roughly $100,000 (undiscounted). Additionally, FMCSA expects that the record-keeping requirement will be multi-year in nature, because the final rule states that employers must maintain training certificate records for one year beyond the date the driver's employment ends with an employer. For this analysis, the agency assumed that employers would maintain each driver's training certificate an average of three years. As such, in years 2 through 10 of the analysis period, annual record retention costs of this final rule are roughly $300,000. Regardless of whether the agency assumed employers would retain entry-level driver training certificates two or three years as the average time, the total discounted costs of this rule did not change significantly.

The agency also estimated a marginal cost to inspect these entry-level driver-training certificates, which the agency estimated would occur as part of a motor carrier compliance review (because no new auditing programs were discussed in detail). However, because in recent years compliance reviews have been conducted on fewer than two percent (or 10,000 of 650,000) of all motor carriers in a given year, and the time to review entry-level driver training certificates would most likely be less than one minute per record, the additional costs associated with this activity were so low that they did not change the annual cost estimates after rounding.

Total first-year costs associated with this rule equal $26 million, with annual costs in years 2 through 10 equal to $14 million (undiscounted). Total discounted costs for this rule over the 10-year analysis period are $121 million.

Benefits

The total number of crashes potentially avoided by the final rule (or direct benefits) is difficult to quantify, largely because of the variability in study results about the impact of training on CMV crash reduction. This variability is most likely due to the wide variation in quality of driver training programs and the difficulty associated with estimating statistically the relationship between a single input (training) and an outcome (safety) when working with very large data sets. However, several case studies reveal that driver-training programs reduced crashes by two to 40 percent. Because of the relatively modest costs (estimated at an annual average of $16 million (undiscounted, after rounding), today's final rule would have to deter up to 201 truck-related crashes (fatal, injury-related, and property-damage-only crashes combined) each year in order to be cost beneficial (*i.e.*, where the rule's benefits exceed its costs).

To develop the estimate of the number of truck- and bus-related crashes that must be avoided each year for the rule to be cost beneficial, FMCSA used crash cost estimates from a recent study by Zaloshnja, *et al.*, which estimated the average cost of a crash involving a large truck (*i.e.*, those with more than 10,000 pounds gross vehicle weight) at $79,873 (in 2002 dollars). Dividing the average annual undiscounted costs of the rule ($16 million) by this average cost per truck-related crash ($79,873) allows us to arrive at the cost-beneficial threshold of 201 annual crashes. To be cost-beneficial, the rule must prevent 201 crashes by the 32,400 entry-level drivers affected by its provisions each year. For the 32,400 entry-level drivers FMCSA estimates must comply in any given year by this rule, this represents a 5-percent reduction in their crashes if FMCSA assumes their crash risk is roughly equal to that of the industry average. Because intuitively FMCSA knows that the crash risk profile of entry-level drivers is much higher than that for the overall driver population (as is the case with new versus experienced employers), FMCSA would anticipate that less than a 5-percent reduction in crashes by this driver group would be required for this rule to be cost-beneficial.

Additionally, FMCSA anticipates that the likely reduction in crashes may also result in carriers having lower insurance bills. The extent to which their premiums would fall is unknown, as the specific reduction in crashes is unknown. Because of the level of uncertainty, FMCSA did not attempt to estimate this benefit. While a reduction in insurance rates may be a benefit to a carrier, it is not a social benefit. The lower rates primarily reflect a monetized value of the reduction in

crash costs. In other words, premiums go down by the amount insurance claims have fallen, so including this as a benefit would be double counting. A reduction in the real cost of administering insurance would constitute a real net benefit. However, it is unlikely that any such reductions would be substantial.

The 201 crashes that must be avoided for the rule to be cost beneficial represent five one-hundredths of one percent (or 0.05 percent) of the average total number of truck-related crashes reported annually (estimated at 445,000 in 1999 and 2000).

A complete copy of the regulatory evaluation is in the public docket.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the agency has evaluated the effects of this rulemaking on small entities. In addition, DOT policy requires an analysis of the impact of all regulations (or proposals) on small entities, and mandates that agencies strive to lessen any adverse effects on these businesses. The Regulatory Flexibility Analysis must cover the following topics.

(1) A description of the reasons why the action by the agency is being considered.

(2) A succinct statement of the objectives of, and legal basis for, the final rule.

(3) A description, and where feasible, an estimate of the number of small entities to which the final rule would apply.

(4) A description of the projected reporting, record-keeping, and other compliance requirements of the final rule, including an estimate of the classes of small entities that will be subject to the requirement and the types of professional skills necessary for preparation of the report or record.

(5) An identification, to the extent practicable, of all relevant federal rules that may duplicate, overlap, or conflict with the final rule.

Reason the Action Is Being Considered

Section 4007(a)(2) of the Intermodal Surface Transportation Efficiency Act of 1991 directed the Secretary of Transportation to undertake a rulemaking on the need for training for entry-level CMV drivers.

Objective and Legal Basis for This Action

The objective for this action is to reduce the number of crashes caused by entry-level CMV drivers. Congress was specifically concerned about the number of crashes caused by inadequate driver training, and believes that better training will reduce these types of crashes. As noted above, the legal basis for this rule is section 4007(a)(2) of the Intermodal Surface Transportation Efficiency Act of 1991.

Number of Small Entities to Which the Action Applies

This action applies to those small entities regulated by the FMCSA that hire entry-level truck, school bus, and motorcoach drivers. It is difficult to determine exactly how many small employers will be affected by this final rule, because it is not known year-to-year how many small employers on average would be likely to hire an entry-level driver. However, as of June 2003, there were 650,000 motor carriers on the FMCSA's Motor Carrier Management Information System (MCMIS) census file. This includes both for-hire and private motor carriers. The Small Business Administration (SBA) defines small businesses in the motor carrier industry based on thresholds for average annual revenues, below which SBA considers a motor carrier small. For trucking companies, the threshold is $21.5 million in annual sales, while for the motorcoach and related industries the threshold is $6 million in annual sales. Data from the 1997 Economic Census (U.S. Census Bureau), North American Industrial Classification System (NAICS) Code 4841, "General Freight Trucking," indicates that 99 percent of "general freight" trucking firms had less than $25 million in annual sales in 1997 (which most closely corresponds to the SBA threshold of $21.5 million for motor carriers). In the case of passenger (or motorcoach) carriers, the 1997 Economic Census NAICS Code 4855, "Charter Bus Industry," indicates that 94 percent of charter bus firms had less than $5 million in annual sales in 1997 (which most closely corresponds to the SBA threshold of $6 million for passenger carriers). In the case of school bus service, the 1997 Economic Census NAICS Code 485410, "School Bus Service," indicates that 96 percent of school bus service firms had less than $5 million in annual sales in 1997 (which most closely corresponds to the SBA threshold of $6 million for this group of carriers).

Because the FMCSA does not have annual sales data on private carriers, it assumes the revenue and operational characteristics of the private trucking firms are generally similar to those of the for-hire motor carriers. Regardless of which of the above percentages is used (99, 94, or 96 percent), FMCSA estimates that over 600,000 of the approximately 650,000 total motor carriers in the MCMIS Census File meet the definition of small businesses.

Recall that the agency estimated that employers would hire 32,400 entry-level drivers affected by this rule each year on average by the motor carrier industry. Also recall that total discounted compliance costs of this final rule were estimated at $121 million over the 10-year analysis period (2004–2013), or an average annual cost of $16 million (undiscounted) in compliance costs. The FMCSA divided the average annual cost of $16 million by the 32,400 entry-level drivers affected by the rule each year, and arrived at an average compliance cost of less than $500 per driver, whether the cost is incurred by drivers who are owner-operators or by the employer providing the training for each of its entry-level drivers). As stated above, FMCSA does not know how many small firms would be hiring one or more of these entry-level drivers in any given year, although with 87 percent of the industry employing six or fewer drivers, it is reasonable to assume that any single small trucking company would be hiring no more than two drivers per year on average. As such, each small carrier (whether an employer or owner-operator) would incur, on average, between $500 and $1000 in compliance costs per year to hire at most two entry-level drivers affected by this rule.

Data from the 1997 Economic Census, NAICS Code 4841 (General Freight Trucking), NAICS Code 4855 (Charter Bus Industry), and NAICS Code 4854101 (School Bus Service), are contained in the following three tables.

TABLE 1.—AVERAGE ANNUAL REVENUES OF SMALL TRUCKING FIRMS
[NAICS Code 4841, General Freight Trucking]

Revenue size	Number of firms (percent of segment total)	Average annual revenues per firm (millions)	Compliance costs ($1000) as percent of annual revenues per firm
Less than $25 million	*27,609	1.33	0.08

*99 percent of segment total.

TABLE 2.—AVERAGE ANNUAL REVENUES OF SMALL PASSENGER CARRIERS
[NAICS Code 4855, Charter Bus Industry]

Revenue size	Number of firms (percent of segment total)	Average annual revenues per firm (millions)	Compliance costs ($1000) as percent of annual revenues per firm
Less than $5 million	*1,022	. 0.98	0.10

*94 percent of segment total.

TABLE 3.—AVERAGE ANNUAL REVENUES OF SMALL PASSENGER FIRMS
[NAICS Code 4854101, School Bus Service]

Revenue size	Number of firms (percent of segment total)	Average annual revenues per firm (millions)	Compliance costs ($1000) as percent of annual revenues per firm
Less than $5 million	*2,397	0.60	0.17

*96 percent of segment total.

One criterion used by SBA to define a "significant" economic impact to small businesses is the impact on the revenues of entities within a particular sector. According to the SBA guidance "The Regulatory Flexibility Act: an Implementation Guide for Federal Agencies," The Office of Advocacy, U.S. Small Business Administration, May 2003, *http://www.sba.gov/advo/laws/rfaguide.pdf*, "if the cost of a proposed regulation exceeds one percent of the gross revenues of the entities in a particular sector" then the regulation should be considered significant. The impact of this regulation on the average annual revenues of small firms in the general freight trucking, charter bus, and school bus industries is far less than one percent per year in all cases (0.08, 0.10, and 0.17 percent, respectively). Therefore, FMCSA certifies that this regulation will not have a significant impact on the small businesses subject to today's final rule.

Reporting, Recordkeeping, and Other Compliance Requirements of the Final Rule

This action imposes some relatively minor record-keeping requirements on employers. The primary employer requirement is to verify drivers' eligibility before allowing them to operate a CMV in interstate commerce. In addition, employers must maintain a copy of the entry-level driver's training certificate in the driver's personnel or qualification file. Employers are currently required to maintain a personnel or qualification file for each driver, as outlined in § 391.51 of the FMCSRs. No special skills are required to verify eligibility to operate a CMV or to place a driver's training certificate in a personnel or qualification file.

Duplicative, Overlapping, or Conflicting Federal Rules

The FMCSA is not aware of any other rules that duplicate, overlap, or conflict with today's final rule.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 requires each agency to assess the effects of its regulatory actions on State, local, tribal governments, and the private sector. This rule does not impose an unfunded Federal mandate resulting in the expenditure by State, local, or tribal governments, in the aggregate, or the private sector of $100 million, adjusted for inflation, or more in any one year. (2 U.S.C. 1531 *et seq.*).

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132. It has been determined that this rulemaking does not have a substantial direct effect on States, nor would it limit the policy-making discretion of the States. Nothing in this document preempts any State law or regulation.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor or require through regulations. An analysis of this proposal was made by the FMCSA, and it has been determined that the final rule, when promulgated, would create a new collection of information requiring OMB's approval. This PRA section addresses the information collection burden for activities associated with training and certifying entry-level drivers.

Today's final rule defines an "entry-level driver" as a person with less than one-year's experience operating a CMV as defined by § 383.5 for any employer in interstate commerce from a period

that begins on July 20, 2003, and thereafter. Entry-level drivers fall into two categories—currently employed and student entry-level drivers—that must be trained in driver qualification, hours-of-service, driver wellness and whistle blower protection requirements before operating a CMV.

A "currently employed entry-level driver" is an individual who began operating a CMV in interstate commerce for any employer one year before the effective date of today's rule. Such a currently employed entry-level driver with up to one-year's worth of experience must obtain the basic training required by this rule no later than October 18, 2004, or 90 days after the effective date of this final rule. The FMCSA is permitting such drivers to operate a CMV during this 90-day delayed compliance period pending completion of the required training and certification. The rule will permit the motor carriers to train the currently employed entry-level drivers in shifts so that the employer does not have to cease interstate operations pending the completion of training. After the 90th day, October 18, 2004, all currently employed entry-level drivers must have received the required training before operating a CMV. Thus, after the 90-day delayed compliance period, there will be no more currently employed drivers subject to this rule.

A "student entry-level driver" is an individual who will begin operating a CMV in interstate commerce *after* the effective date of this final rule July 21, 2004, and must receive the minimum training required by this action before driving a CMV. Thus, all student drivers will be subject to this rule after its effective date.

Upon completing the required minimum training for both currently employed and student entry-level drivers, the employer will give each entry-level driver it trains, or ensure the training provider gives each entry-level driver, a copy of the training certificate. Each employer that uses an entry-level driver that has been trained by a training provider other than the employer must obtain a copy of the training certificate from the driver or training provider. The employer must also retain and keep a copy of the training certificate in the entry-level driver's personnel file or qualification file so the employer can prove to the FMCSA that the driver has received the required minimum training.

The FMCSA estimates there are about 32,425 currently employed drivers [1] who need to be trained during the first 90 days after the rule is implemented. The agency also estimates there would be an annual burden to the motor carrier or other training entity to complete, photocopy, and file the training certification form for the currently employed entry-level driver that has been trained to operate a CMV. FMCSA estimates that this first-year information collection activity will take 10 minutes, resulting in an annual burden of 5,404 burden hours [32,425 (30,765 truck drivers plus 1,575 motorcoach drivers plus 85 school bus drivers equals 32,425) times 10 minutes per motor carrier/training entity/60 minutes equals 5,404]. There will be no information collection burden for currently employed entry-level drivers in subsequent years. This final rule provides for no grandfathered or exempt drivers.

FMCSA estimates that in the first year and subsequent years, 32,425 student entry-level drivers [2] will need the minimum training required by this final rule. There would be an annual burden to the motor carrier or other training entity to complete, photocopy and file the certification form for these student entry-level drivers. FMCSA estimates that this information collection activity will take 10 minutes, resulting in a first year annual burden of 5,404 burden hours [32,425 (30,765 truck drivers plus 1,575 motorcoach drivers plus 85 school bus drivers equals 32,425) times 10 minutes per motor carrier/training entity/60 minutes equals 5,404]; and in subsequent years of 5,404 burden hours [32,425 (30,765 truck drivers plus 1,575 motorcoach drivers plus 85 school bus drivers equals 32,425) × 10 minutes per motor carrier/training entity/60 minutes equals 5,404].

Thus, the total first-year information collection burden associated with this final rule, when promulgated, is estimated to be 10,808 burden hours [5,404 burden hours for currently employed entry-level drivers plus 5,404 burden hours for student entry-level drivers equals 10,808 hours]. In subsequent years, there would be no information collection burden associated with currently employed entry-level drivers; and the burden would drop as it relates to student entry-level drivers to 5,404 burden hours.

OMB Control Number: 2126–NEW.

Title: Training Certification for Entry Level Commercial Motor Vehicle Operators.

Respondents: First year 64,850; subsequent years 32,425.

Estimated Annual Hour Burden for the Information Collection: First year 10,808 hours; and subsequent years 5,404 hours.

Interested parties are invited to send comments regarding any aspect of these information collection requirements, including, but not limited to: (1) Whether the collection of information is necessary for the performance of the functions of the FMCSA, including whether the information has practical utility, (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 information collected.

If you submit copies of your comments to the Office of Management and Budget concerning the information collection requirements of this document, your comments to OMB will be most useful if received at OMB by June 21, 2004. You should mail, hand deliver, or fax a copy of your comments to: Attention: Desk Officer for the Department of Transportation, Docket Library, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, 725 17th Street, NW., Washington, DC 20503, fax: (202) 395–6566.

National Environmental Policy Act

The agency analyzed this final rule for the purpose of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and determined under our environmental procedures Order 5610.1, issued March 1, 2004 (69 FR 9680), that this action is categorically excluded (CE) under Appendix 2, paragraph 6.d. of the Order from further environmental documentation. That CE relates to establishing regulations and actions taken pursuant to the regulations concerning the training, qualifying, licensing, certifying, and managing of personnel. In addition, the agency believes that this action includes no extraordinary circumstances that would have any effect on the quality of the environment. Thus, the action does not require an environmental assessment or an environmental impact statement.

We have also analyzed this rule under the Clean Air Act, as amended (CAA), section 176(c) (42 U.S.C. 7401 *et seq.*), and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's

[1] This 32,425 estimate for currently employed entry-level drivers consists of 30,765 student truck drivers, 1,575 student motorcoach drivers and 85 student school bus drivers.

[2] FMCSA's 32,425 estimate for student entry-level driver estimate consists of 30,765 student truck drivers, 1,575 student motorcoach drivers and 85 student school bus drivers.

General conformity requirement since it involves policy development and civil enforcement activities, such as, investigations, inspections, examinations, and the training of law enforcement personnel. *See* 40 CFR 93.153(c)(2). It will not result in any emissions increase nor will it have any potential to result in emissions that are above the general conformity rule's *de minimis* emission threshold levels. Moreover, it is reasonably foreseeable that the rule will not increase total CMV mileage, change the time of day when, or how, CMVs operate, the routing of CMVs, or the CMV fleet-mix of motor carriers. This action merely establishes standards for minimum training requirements for entry-level operators of CMVs.

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low Income Populations)

The agency evaluated the environmental effects of the proposed action and alternatives in accordance with Executive Order 12898 and determined that there are no environmental justice issues associated with this rule. Environmental justice issues would be raised if there were a "disproportionate" and "high and adverse impact" on minority or low-income populations. The agency determined that there are no high and adverse impacts associated with the final rule. In addition, the agency analyzed the demographic makeup of the trucking industry, potentially affected, and determined that there will be no disproportionate impact on minority or low-income populations. This is based on the finding that low-income and minority populations are generally underrepresented in the CMV driver occupations.

Executive Order 13045 (Protection of Children)

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (April 23, 1997, 62 FR 19885), requires that agencies issuing "economically significant" rules that also concern an environmental health or safety risk, or that an agency has reason to believe may disproportionately affect children, must include an evaluation of these effects on children. Section 5 of Executive Order 13045 directs an agency to submit for a "covered regulatory action" an evaluation of its environmental health or safety effects on children. The agency evaluated the possible effects of the action and determined that it will not create disproportionate environmental health risks or safety risks to children.

Executive Order 12988 (Civil Justice Reform)

This action 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.

Executive Order 12630 (Taking of Private Property)

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

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number of 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

List of Subjects in 49 CFR Part 380

Driver training, Instructor requirements.

■ For the reasons stated in the preamble, FMCSA amends 49 CFR chapter III, subchapter B, part 380 (added at 69 FR 16732, March 30, 2004, and effective June 1, 2004) as set forth below:

PART 380—SPECIAL TRAINING REQUIREMENTS

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

Authority: 49 U.S.C. 31133, 31136, 31307, and 31502; sec. 4007(a) and (b) of Pub. L. 102–240 (105 Stat. 2151–2152); and 49 CFR 1.73.

■ 2. Part 380 is amended by adding a new subpart E to read as follows.

Subpart E—Entry-Level Driver Training Requirements

Sec.

Subpart E—Entry-Level Driver Training Requirements

§ 380.500 Compliance date for training requirements for entry-level drivers.

(a) Employers must ensure that each entry-level driver has received the training required by this subpart no later than July 20, 2004, except as provided in paragraph (b) of this section.

(b) Each employer must ensure that each entry-level driver who first began operating a CMV in interstate commerce requiring a CDL between July 20, 2003, and October 18, 2004, has had the required training no later than October 18, 2004.

§ 380.501 Applicability.

All entry-level drivers who drive in interstate commerce and are subject to the CDL requirements of part 383 of this chapter must comply with the rules of this subpart, except drivers who are subject to the jurisdiction of the Federal Transit Administration or who are otherwise exempt under § 390.3(f) of this subchapter.

§ 380.502 Definitions.

(a) The definitions in part 383 of this chapter apply to this part, except where otherwise specifically noted.

(b) As used in this subpart:

Entry-level driver is a driver with less than one year of experience operating a CMV with a CDL in interstate commerce.

Entry-level driver training is training the CDL driver receives in driver qualification requirements, hours of service of drivers, driver wellness, and whistle blower protection as appropriate to the entry-level driver's current position in addition to passing the CDL test.

§ 380.503 Entry-level driver training requirements.

Entry-level driver training must include instruction addressing the following four areas:

(a) *Driver qualification requirements.* The Federal rules on medical certification, medical examination procedures, general qualifications, responsibilities, and disqualifications based on various offenses, orders, and loss of driving privileges (part 391, subparts B and E of this subchapter).

(b) *Hours of service of drivers.* The limitations on driving hours, the requirement to be off-duty for certain periods of time, record of duty status preparation, and exceptions (part 395 of this subchapter). Fatigue countermeasures as a means to avoid crashes.

(c) *Driver wellness.* Basic health maintenance including diet and

exercise. The importance of avoiding excessive use of alcohol.

(d) *Whistleblower protection.* The right of an employee to question the safety practices of an employer without the employee's risk of losing a job or being subject to reprisals simply for stating a safety concern (29 CFR part 1978).

§ 380.505 Proof of training.

An employer who uses an entry-level driver must ensure the driver has received a training certificate containing all the information contained in § 380.513 from the training provider.

§ 380.507 Driver responsibilities.

Each entry-level driver must receive training required by § 380.503.

§ 380.509 Employer responsibilities.

(a) Each employer must ensure each entry-level driver who first began operating a CMV requiring a CDL in interstate commerce after July 20, 2003, receives training required by § 380.503.

(b) Each employer must place a copy of the driver's training certificate in the driver's personnel or qualification file.

(c) All records required by this subpart shall be maintained as required by § 390.31 of this subchapter and shall be made available for inspection at the employer's principal place of business within two business days after a request has been made by an authorized representative of the Federal Motor Carrier Safety Administration.

§ 380.511 Employer recordkeeping responsibilities.

The employer must keep the records specified in § 380.505 for as long as the employer employs the driver and for one year thereafter.

§ 380.513 Required information on the training certificate.

The training provider must provide a training certificate or diploma to the entry-level driver. If an employer is the training provider, the employer must provide a training certificate or diploma to the entry-level driver. The certificate or diploma must contain the following seven items of information:

(a) Date of certificate issuance.

(b) Name of training provider.

(c) Mailing address of training provider.

(d) Name of driver.

(e) A statement that the driver has completed training in driver qualification requirements, hours of service of drivers, driver wellness, and whistle blower protection requirements substantially in accordance with the following sentence:

I certify _____ has completed training requirements set forth in the Federal Motor Carrier Safety Regulations for entry-level driver training in accordance with 49 CFR 380.503.

(f) The printed name of the person attesting that the driver has received the required training.

(g) The signature of the person attesting that the driver has received the required training.

Issued on: May 17, 2004.

Annette M. Sandberg,

Administrator.

[FR Doc. 04–11475 Filed 5–20–04; 8:45 am]

BILLING CODE 4910–EX–P

Federal Register

Friday,
May 21, 2004

Part V

The President

Notice of May 20, 2004—Continuation of the National Emergency Protecting the Development Fund for Iraq and Certain Other Property in Which Iraq has an Interest

Federal Register
Vol. 69, No. 99
Friday, May 21, 2004

Presidential Documents

Title 3—

The President

Notice of May 20, 2004

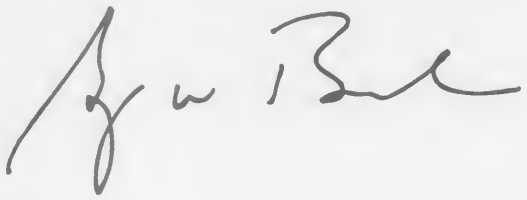
Continuation of the National Emergency Protecting the Development Fund for Iraq and Certain Other Property in Which Iraq has an Interest

On May 22, 2003, by Executive Order 13303, I declared a national emergency protecting the Development Fund for Iraq and certain other property in which Iraq has an interest, pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706). I took this action to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States posed by the obstacles to the orderly reconstruction of Iraq, the restoration and maintenance of peace and security in the country, and the development of political, administrative, and economic institutions in Iraq constituted by the threat of attachment or other judicial process against the Development Fund for Iraq, Iraqi petroleum and petroleum products, and interests therein, and proceeds, obligations, or any financial instruments of any nature whatsoever arising from or related to the sale or marketing thereof.

On August 28, 2003, in Executive Order 13315, I expanded the scope of this national emergency to block the property of the former Iraqi regime, its senior officials and their family members as the removal of Iraqi property from that country by certain senior officials of the former Iraqi regime and their immediate family members constitutes an obstacle to the orderly reconstruction of Iraq, the restoration and maintenance of peace and security in the country, and the development of political, administrative, and economic institutions in Iraq.

Because these obstacles to the orderly reconstruction of Iraq, the restoration and maintenance of peace and security in the country, and the development of political, administrative, and economic institutions in Iraq continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States, the national emergency declared on May 22, 2003, and the measures adopted on that date and on August 28, 2003, to deal with that emergency, must continue in effect beyond May 22, 2004. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency protecting the Development Fund for Iraq and certain other property in which Iraq has an interest.

This notice shall be published in the **Federal Register** and transmitted to the Congress.



THE WHITE HOUSE,
May 20, 2004.

[FR Doc. 04–11817
Filed 5–20–04; 2:48 pm]
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LIST OF PUBLIC LAWS

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S. 2315/P.L. 108–228
To amend the Communications Satellite Act of 1962 to extend the deadline for the INTELSAT initial public offering. (May 18, 2004; 118 Stat. 644)

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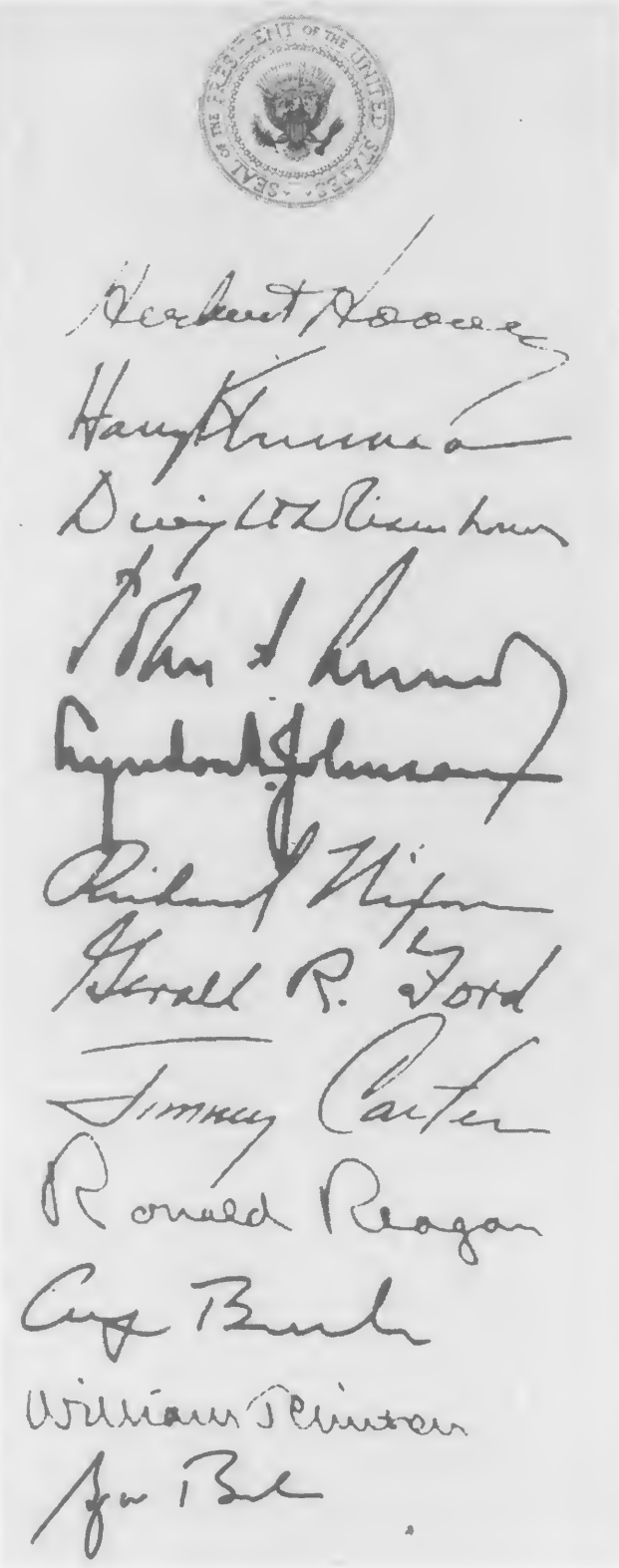

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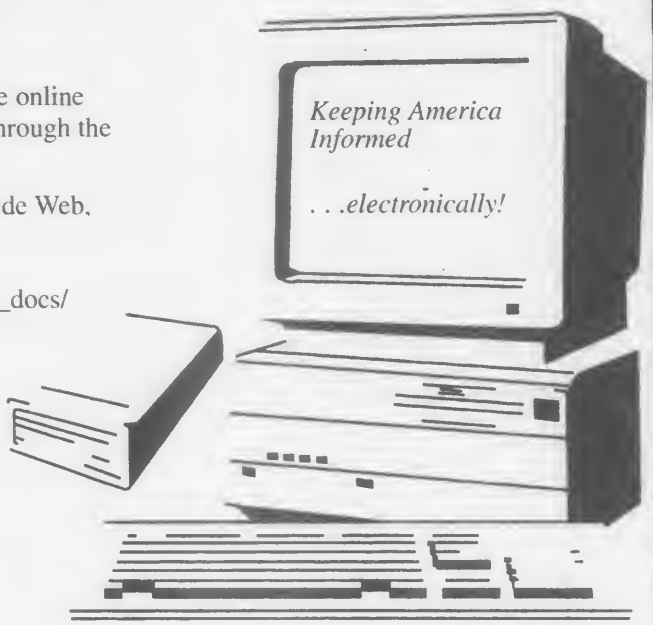

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