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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16705; Airspace Docket No. 03–AGL–20]

Modification of Class D Airspace Area; Mount Clemens, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Class D airspace area at Mount Clemens, MI. Instrument Flight Rules (IFR) Category E circling procedures are being used at Selfridge Air National Guard Base, MI. This action increases the current area of the Class D airspace, allowing for a lower Circling Minimum Descent Altitude.

DATES: Effective November 25, 2004.

FOR FURTHER INFORMATION CONTACT: J. Mark Reeves, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Background

On February 25, 2004, the FAA issued a notice proposing to modify the Class D airspace area for Selfridge Air National Guard Base, MI. The proposal was to increase the existing radius of the Class D airspace area to allow for lower IFR Category E circling minimums.

Discussion of Comment

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal. All comments received were reviewed prior to taking any final action on this matter. In response to the notice, we received twenty-four comments. All of the comments received stated objection or provided other comments on the proposal. Those objecting to the proposal expressed concern that the proposed expansion of the Class D Airspace Area would infringe upon the airspace surrounding nearby Ray Community Airport (57D), thereby limiting their ability to operate into and out of this airport under certain conditions. It was also stated that the potential decrease of flights into and out of the airport, could cause adverse economic impact.

Other commenters expressed concern that the proposed expansion would decrease the width of a Visual Flight Rules (VFR) corridor east of Selfridge ANGB., and west of the Canadian border.

Several other commenters stated that circling procedures are currently not allowed west of Selfridge ANGB, and expansion of the Class D airspace in that direction, would force aircraft to fly over more densely populated areas.

In response to the comments received, discussions were held between the FAA and the military to see if a modification could be made to the proposed expansion. As a result, the military felt that a smaller expansion could serve their needs. Except for a 1.4-mile increase to the existing Class D airspace radius to the east, the rest of the Class D airspace area will remain unchanged.

The Rule

This amendment to 14 CFR part 71 modifies the Class D airspace area at Mount Clemens, MI, for Selfridge Air National Guard Base. The area will be depicted on appropriate aeronautical charts.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

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

* * * * *

Paragraph 5000 Class D airspace.

* * * * *

AGL MI D Mount Clemens, MI [Revised]

Mount Clemens, Selfridge Air National Base, MI
(Lat. 42°36'03" N., long. 82°50'14" W.)

That airspace extending upward from the surface to and including 3,100 feet MSL within a 4.3-mile radius of the Selfridge Air National Guard Base and within 1.5 miles west of the Selfridge TACAN 359° radial extending from the 4.3-mile radius to 5.7 miles north of the airport clockwise to 1.5 miles west of the Selfridge TACAN 191° radial then north to the 4.3-mile radius. This Class D airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Des Plaines, IL, on August 5, 2004.

Nancy B. Kort,

Area Director, Central Terminal Operations.

[FR Doc. 04–19376 Filed 8–23–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–17163; Airspace Docket No. 04–AGL–10]

Modification of Class D Airspace; Rochester, MN; Modification of Class E Airspace; Rochester, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class D airspace at Rochester, MN, and modifies Class E airspace at Rochester, MN. Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAPS) have been developed for Rochester International Airport. Controlled airspace extending upward from the surface of the earth is needed to contain aircraft executing these approaches. This action would increase the existing radius of Class D airspace, and increase the existing area of Class E airspace for Rochester International Airport.

DATES: Effective 0901 UTC, November 25, 2004.

FOR FURTHER INFORMATION CONTACT: J. Mark Reeves, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Wednesday, June 9, 2004, the FAA proposed to amend 14 CFR part 71 to modify Class D airspace and modify Class E airspace at Rochester, MN (69 FR 32288). The proposal was to modify Class D airspace, and modify Class E airspace extending upward from the surface of the earth to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class D airspace designations are published in paragraph 5000. Class E airspace areas extending upward from 700 feet above the surface of the earth in paragraph 6005, Class E airspace areas designated as surface areas in paragraph 6002, and Class E airspace areas designated as an extension to a Class D or Class E surface area in paragraph 6004, of FAA Order 7400.9L dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

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

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 5000 Class D airspace.

* * * * *

AGL MN D Rochester, MN [Revised]

Rochester International Airport, NM
(Lat. 43°54′26″ N., long. 92°29′56″ W.)
Rochester VOR/DME
(Lat. 43°46′58″ N., long. 92°35′49″ W.)

That airspace extending upward from the surface to and including 3,800 feet MSL within a 4.3-mile radius of the Rochester International Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be published continuously in the Airport/Facility Directory.

* * * * *

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

* * * * *

AGL MN E5 Rochester, MN [Revised]

Rochester International Airport, MN
(Lat. 43°54′26″ N., long. 92°29′56″ W.)
Rochester VOR/DME
(Lat. 43°46′58″ N., long. 92°35′49″ W.)
St. Mary's Hospital Heliport, MN
(Lat. 44°01′11″ N., long. 92°28′59″ W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of the Rochester International Airport, and within 3.2 miles each side of the Rochester VOR/DME 028° radial extending from the 6.8-mile radius to 7.9 miles southwest of the airport, within 5.3 miles southwest and 4 miles northeast of the Rochester northwest localizer course extending from the 6.8-mile radius to 20 miles northwest of the airport, within 5.3 miles northeast and 4 miles southwest of the Rochester southeast localizer course extending from the 6.8-mile radius to 17.3 miles southeast of the airport and within a 6.4-mile radius of the St. Mary's Hospital Heliport.

* * * * *

Paragraph 6002 Class E airspace designated as surface areas.

* * * * *

AGL MN E2 Rochester, MN [Revised]

Rochester International Airport, MN
(Lat. 43°54′26″ N., long. 92°29′56″ W.)
Rochester VOR/DME
(Lat. 43°46′58″ N., long. 92°35′49″ W.)

Within a 4.3-mile radius of the Rochester International Airport, and within 3.1 miles each side of the Rochester VOR/DME 028° radial, extending from the 4.3-mile radius to 7 miles southwest of the airport. This Class E airspace area is effective during the specific dates and times established by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6004 Class E airspace areas designated as an extension to a Class D or Class E surface area.

* * * * *

ALG MN E4 Rochester, MN [Revised]

Rochester International Airport, MN
(Lat. 43°54′26″ N.,long. 92°29′56″ W.)
Rochester VOR/DME
(Lat. 43°46′58″ N.,long. 92°35′49″ W.)

That airspace extending upward from the surface within 3.1 miles each side of the Rochester VOR/DME 028° radial, extending from the 4.3-mile radius to 7 miles southwest of the airport. This Class E airspace area is effective during the specific dates and times established by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Des Plaines, Illinois on August 5, 2004.

Nancy B. Kort,

Area Director, Central Terminal Operations.

[FR Doc. 04–19375 Filed 8–23–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–17136; Airspace Docket No. 04–AGL–08]

Modification of Class D Airspace; Camp Douglas, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class D airspace at Camp Douglas, WI. Category E circling procedures are being used at Volk Field, Camp Douglas, WI. Increasing the current radius of the Class D airspace area will allow for a lower Minimum Descent Altitude. Controlled airspace extending upward from the surface of the earth is needed to contain aircraft executing these approach procedures. This action increases the area of the existing controlled airspace at Volk Field, Camp Douglas, WI.

DATES: Effective 0901 UTC, November 25, 2004.

FOR FURTHER INFORMATION CONTACT: J. Mark Reeves, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Wednesday, April 21, 2003, the FAA proposed to amend 14 CFR part 71 to modify Class D airspace at Camp Douglas, WI (69 FR 21447). The proposal was to modify controlled airspace extending upward from the surface of the earth to contain Instrument Flight Rules (IFR) operations in controlled airspace.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class D airspace areas extending upward from the surface of the earth are published in paragraph 5000, of FAA Order 7400.9L dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designations listed in this document will be published subsequently in the order.

The Rule

The amendment to 14 CFR part 71 modifies Class D airspace at Camp Douglas, WI, to accommodate aircraft executing instrument flight procedures into and out of Volk Field. The area will be depicted on appropriate aeronautical charts.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

* * * * *

Paragraph 5000 Class D airspace.

* * * * *

AGL WID Camp Douglas, WI [Revised]

Camp Douglas, Volk Field, WI
(Lat. 43°56′20″ N., long. 90°15′13″ W.)

That airspace extending upward from the surface to and including 3,400 feet MSL within a 5.8-mile radius of Volk Field from the Volk Field 250° bearing clockwise to the Volk Field 110° bearing. This Class D airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Des Plaines, Illinois on August 5, 2004.

Nancy B. Kort,

Area Director, Central Terminal Operations.

[FR Doc. 04–19374 Filed 8–23–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–17092; Airspace Docket No. 04–AGL–07]

Modification of Class E Airspace; Janesville, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: Effective 0901 UTC, November 25, 2004.

FOR FURTHER INFORMATION CONTACT: J. Mark Reeves, Air Traffic Division,

Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Wednesday, April 21, 2004, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Janesville, WI (69 FR 21449). The proposal was to modify controlled airspace extending upward from 700 feet or more above the surface of the earth to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

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

The Rule

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

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

* * * * *

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

* * * * *

AGL WI E5 Janesville, WI [Revised]

Janesville, Southern Wisconsin Regional Airport, WI
(Lat. 42°37′13″ N., long. 89°02′30″ W.)
Beloit Airport, WI
(Lat. 42°29′52″ N., long. 88°58′03″ W.)

That airspace extending upward from 700 feet above the surface within an 8.9-mile radius of the Southern Wisconsin Regional Airport and within a 6.3-mile radius of the Beloit Airport, excluding that airspace within the Belvidere, IL Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on August 5, 2004.

Nancy B. Kort,

Area Director, Central Terminal Operations.

[FR Doc. 04–19373 Filed 8–23–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–17096; Airspace Docket No. 04–AGL–05]

Modification of Class E Airspace; South Haven, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at South Haven, MI. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) 160° helicopter point in space approach has been developed for Watervliet Community Hospital, Watervliet, MI. Controlled airspace extending upward from 700 feet above the surface of the earth is needed to contain aircraft executing this approach. This action increases the area of the existing controlled airspace for South Haven Area Regional Airport.

DATES: Effective 0901 UTC, November 25, 2004.

FOR FURTHER INFORMATION CONTACT: J. Mark Reeves, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Thursday, April 15, 2004, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at South Haven, MI (69 FR 19962). The proposal was to modify controlled airspace extending upward from 700 feet above the surface of the earth to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

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

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at South Haven, MI, to accommodate aircraft executing instrument flight procedures into and out of Watervliet Community Hospital. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies

and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

* * * * *

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

* * * * *

AGL MI E5 South Haven, MI [Revised]

South Haven Area Regional Airport, MI
(Lat. 42°21′03″ N., long. 86°15′22″ W.)
Pullman VORTAC
(Lat. 42°27′56″ N., long. 86°06′21″ W.)
Watervliet, Watervliet Community Hospital, MI Point in Space Coordinates
(Lat. 39°37′53″ N., long. 86°48′50″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of South Haven Area Regional Airport and within 1.3 miles each side of the Pullman VORTAC 224° radial extending from the 6.6-mile radius to the VORTAC, and within a 6-mile radius of the point in space serving the Watervliet Community Hospital, excluding that airspace within the South Bend, IN, Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on August 5, 2004.

Nancy B. Kort,

Area Director, Central Terminal Operations.

[FR Doc. 04–19372 Filed 8–23–04; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–17095; Airspace Docket No. 04–AGL–04]

Modification of Class E Airspace; Kalamazoo, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Kalamazoo, MI. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) 150° helicopter point in space approach has been developed for Burgess Hospital, Kalamazoo, MI. Controlled airspace extending upward from 700 feet above the surface of the earth is needed to contain aircraft executing this approach. This action increases the area of the existing controlled airspace for Kalamazoo/Battle Creek International Airport.

DATES: Effective 0901 UTC, November 25, 2004.

FOR FURTHER INFORMATION CONTACT: J. Mark Reeves, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Thursday, April 15, 2004, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Kalamazoo, MI (69 FR 19960). The proposal was to modify controlled airspace extending upward from 700 feet above the surface of the earth to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

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

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Kalamazoo, MI, to accommodate aircraft executing instrument flight procedures into and out of Burgess Hospital. The area will be depicted on appropriate aeronautical charts.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

* * * * *

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

* * * * *

AGL MI E5 Kalamazoo, MI [Revised]

Kalamazoo/Battle Creek International Airport, MI
(Lat. 42°14′06″ N., long. 85°33′07″ W.)
Kalamazoo, Burgess Hospital, MI Point in Space Coordinates
(Lat. 42°19′44″ N., long. 85°34′47″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of the Kalamazoo/Battle Creek International Airport and within a 6-mile radius of the point in space serving the Burgess Hospital.

* * * * *

Issued in Des Plaines, Illinois, on August 5, 2004.

Nancy B. Kort,

Area Director, Central Terminal Operations.

[FR Doc. 04–19371 Filed 8–23–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–17094; Airspace Docket No. 04–AGL–03]

Establishment of Class E Airspace; Northwood, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Northwood, ND. An area Navigation (RNAV) Standard Instrument Approach Procedure (SIAP) has been developed for Northwood Municipal—Vince Field Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing this approach. This action establishes an area of controlled airspace for Northwood Municipal—Vince Field Airport.

DATES: Effective 0901 UTC, November 25, 2004.

FOR FURTHER INFORMATION CONTACT: J. Mark Reeves, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Thursday, April 15, 2004, the FAA proposed to amend 14 CFR part 71 to establish Class E airspace at Northwood, ND (69 FR 19961). The proposal was to establish controlled airspace extending upward from 700 feet or more above the surface of the earth to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

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

The Rule

This amendment to 14 CFR part 71 establishes Class E airspace at Northwood, ND, to accommodate aircraft executing instrument flight procedures into and out of Northwood Municipal—Vince Field Airport. The area will be depicted on appropriate aeronautical charts.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

* * * * *

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

* * * * *

AGL ND E5 Northwood, ND [New]

Northwood, Northwood Municipal—Vince Field Airport, ND
(Lat. 47°43′27″ N., long. 97°326″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Northwood Municipal—Vince Field Airport.

* * * * *

Issued in Des Plaines, Illinois on August 5, 2004.

Nancy B. Kort,

Area Director, Central Terminal Operations.

[FR Doc. 04–19370 Filed 8–23–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–17093; Airspace Docket No. 04–AGL–02]

Modification of Class E Airspace; Georgetown, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Georgetown, OH. An Area Navigation (RNAV) Standard Instrument Approach Procedure (SIAP) has been developed for Brown County Airport. Controlled airspace extending upward from 700 feet above the surface of the earth is needed to contain aircraft executing this approach. This action increases the area of the existing

controlled airspace for Brown County Airport.

DATES: Effective 0901 UTC, November 25, 2004

FOR FURTHER INFORMATION CONTACT: J. Mark Reeves, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Wednesday, April 7, 2004, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Georgetown, OH (69 FR 18308). The proposal was to modify controlled airspace extending upward from 700 feet above the surface of the earth to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

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

The Rule

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

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

* * * * *

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

* * * * *

AGL OH E5 Georgetown, OH [Revised]

Brown County Airport, OH
(Lat. 38°52′55″ N., long. 83°52′58″ W.)

That airspace extending upward from 700 feet above the surface within an 8.7-mile radius of Brown County Airport, excluding that airspace within the West Union, OH Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on August 5, 2004.

Nancy B. Kort,

Area Director, Central Terminal Operations.

[FR Doc. 04–19369 Filed 8–23–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–18013; Airspace Docket No. 04–ACE–42]

Modification of Class E Airspace; Columbus, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

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

DATES: Effective 0901 UTC, September 30, 2004.

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

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on July 2, 2004 (69 FR 40310) and subsequently published a correction to the direct final rule on August 5, 2004 (69 FR 47357). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on September 30, 2004. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO, on August 10, 2004.

David W. Hope,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 04–19367 Filed 8–23–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–16963; Airspace Docket No. 04–AGL–01]

Modification of Class E Airspace; Urbana, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Urbana, OH. Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAPS) have been developed for Grimes Field. Controlled airspace extending upward from 700

feet above the surface of the earth is needed to contain aircraft executing these approaches. This action increases the area of the existing controlled airspace for Grimes Field.

DATES: Effective 0901 UTC, November 25, 2004.

FOR FURTHER INFORMATION CONTACT: J. Mark Reeves, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Thursday, April 15, 2004, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Urbana, OH (69 FR 19958). The proposal was to modify controlled airspace extending upward from 700 feet above the surface of the earth to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

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

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Urbana, OH, to accommodate aircraft executing instrument flight procedures into and out of Grimes Field. The area will be depicted on appropriate aeronautical charts.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

* * * * *

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

* * * * *

AGL OH E5 Urbana, OH [Revised]

Urbana, Grimes Field, OH
(Lat. 40°07′57″ N., long. 83°45′12″ W.)

That airspace extending upward from 700 feet above the surface within an 8.2-mile radius of Urbana, Grimes Field, excluding that airspace within the Daytona, OH Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on August 5, 2004.

Nancy B. Kort,

Area Director, Central Terminal Operations.

[FR Doc. 04–19368 Filed 8–23–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 30422; Amdt. No. 450]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

DATES: Effective 0901 UTC, September 30, 2004.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and

contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR Part 95

Airspace, Navigation (air).

Issued in Washington, DC, on August 17, 2004.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC,

■ 1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44719, 44721.

■ 2. Part 95 is as follows:

REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINTS

[Amendment 450 effective date, September 30, 2004]

From	To	MEA	MAA
§ 95.5000 High Altitude RNAV Routes			
§ 95.5001 RNAV Route No. Q1 Is Amended To Read in Part			
ELMAA, WA FIX	POINT REYES, CA VORTAC		45000
	GNSS	18000	
	DME/DME/IRU RNAV	29000	
§ 95.5003 RNAV Route No. Q3 Is Amended To Read in Part			
FEPOT, WA FIX	POINT REYES, CA VORTAC		45000
	GNSS	18000	
	DME/DME/IRU/RNAV	29000	
§ 95.5005 RNAV Route No. Q5 Is Amended To Read in Part			
HAROB, WA FIX	STIKM, CA FIX		45000
	GNSS	18000	
	DME/DME/IRU/RNAV	29000	

From	To	MEA
§ 95.60001 VICTOR Routes—U.S.		
§ 95.6070 VOR Federal Airway 70 Is Amended To Read In Part		
CHAFF, AL FIX	RUTEL, AL FIX	*2,500
*1,800–MOCA		
§ 95.6198 VOR Federal Airway 198 Is Amended To Read in Part		
FORT STOCKTON, TX VORTAC.		
*5,500–MOCA	KEMPL, TX FIX	*8,000
KEMPL, TX FIX	JUNCTION, TX VORTAC	*6,000
*4,000–MOCA		
§ 95.6222 VOR Federal Airway 222 Is Amended To Read in Part		
FORT STOCKTON, TX VORTAC.		
*5,500–MOCA	KEMPL, TX FIX	*8,000
KEMPL, TX FIX	JUNCTION, TX VORTAC	*6,000
*4,000–MOCA		
§ 95.6329 VOR Federal Airway 329 Is Amended To Read in Part		
RUTEL, AL FIX	MONTGOMERY, AL VORTAC	*3,000
*1,900–MOCA		
§ 95.6454 VOR Federal Airway 454 Is Amended To Read in Part		
CHAFF, AL FIX	RUTEL, AL FIX	*2,500

From	To	MEA
*1,800–MOCA		

[FR Doc. 04–19365 Filed 8–23–04; 8:45 am]
BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ 126–0074a; FRL–7789–9]

Revisions to the Arizona State Implementation Plan, Arizona Department of Environmental Quality

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing approval of revisions to the Arizona Department of Environmental Quality (ADEQ) portion of the Arizona State Implementation Plan (SIP). These revisions were proposed in the **Federal Register** on April 22, 2004, and concern opacity standards related to particulate matter (PM–10) emissions from industrial processes. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

EFFECTIVE DATE: This rule is effective on September 23, 2004.

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

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

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

Arizona Department of Environmental Quality, 1110 West Washington Street, Phoenix, AZ 95007.

A copy of the rules may also be available via the Internet at *http://www.sosaz.com/public_services/Title_18/18–02.htm*. Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 947–4118, *petersen.alfred@epa.gov*.

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

I. Proposed Action

On April 22, 2004 (69 FR 21797), EPA proposed to approve the following rules into the Arizona SIP.

TABLE 1.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Amended	Submitted
ADEQ	R18–2–101 (paragraphs 41 and 111).	Definitions ["existing source" and "stationary source"]	11/15/93	01/16/04
ADEQ	R18–2–702	General Provisions [Visible Emissions]	12/26/03	01/16/04

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

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received no comments on the proposed action.

III. EPA Action

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

IV. Statutory and Executive Order Reviews

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

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 25, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: July 8, 2004.

Wayne Nastri,

Regional Administrator, Region IX.

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

PART 52—[AMENDED]

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

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

Subpart D—Arizona

■ 2. Section 52.120 is amended by adding paragraph (c)(115) to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(115) Amended regulations were submitted on January 16, 2004, by the Governor's designee.

(i) Incorporation by reference.

(A) Arizona Department of Environmental Quality.

(1) Rule 18–2–101 (Paragraphs 41 and 111), amended on November 15, 1993 and Rule R–18–2–702, amended on December 26, 2003.

* * * * *

[FR Doc. 04–19231 Filed 8–23–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R07–OAR–2004–MO–0002; FRL–7805–1]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is announcing it is approving a revision to the Missouri State Implementation Plan (SIP) which pertains to a state rule and maintenance plan applicable to the Doe Run Resource Recycling Lead Facility at Buick, Missouri. This revision revises certain furnace production limits at the facility, which are contained in the state rule and maintenance plan.

Approval of this revision will ensure consistency between the state and federally-approved rules and maintenance plan, and ensure Federal enforceability of the revised state rule and maintenance plan.

DATES: This direct final rule will be effective October 25, 2004, without further notice, unless EPA receives adverse comment by September 23, 2004. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R07–OAR–2004–MO–0002, by one of the following methods:

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

2. *Agency Web site: http://docket.epa.gov/rmepub/.* RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select "quick search;" then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.

3. *E-mail: robinson.judith@epa.gov.*

4. *Mail:* Judith Robinson, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

5. *Hand Delivery or Courier:* Deliver your comments to Judith Robinson, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Instructions: Direct your comments to RME ID No. R07–OAR–2004–MO–0002. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://docket.epa.gov/rmepub/,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, regulations.gov, or e-mail. The EPA RME Web site and the Federal regulations.gov Web site are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of

special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the RME index at *http://docket.epa.gov/rmepub/*. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. The Regional Office's official hours of business are Monday through Friday. 8 a.m. to 4:30 p.m., excluding Federal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Judith Robinson at (913) 551–7825, or by e-mail at *robinson.judith@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This section provides additional information by addressing the following questions:

What Is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards (NAAQS) established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: Carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to EPA for approval and incorporation into the federally-enforceable SIP.

Each federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What Is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the federally-enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the federally-approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at title 40, part 52, entitled "Approval and Promulgation of Implementation Plans." The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are "incorporated by reference," which means that we have approved a given state regulation with a specific effective date.

What Does Federal Approval of a State Regulation Mean to Me?

Enforcement of the state regulation before and after it is incorporated into the federally-approved SIP is primarily a state responsibility. However, after the regulation is federally-approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

What Is Being Addressed in This Document?

We are revising the maintenance plan for western Iron County, Missouri, as an amendment to the SIP. This was submitted to us on April 29, 2003. The plan includes production limit changes in order to match revisions to 10 CSR 10–6.120 that revised furnace throughput limits. These changes allow Doe Run greater operational flexibility without increasing net lead emissions. It also corrects grammatical errors and updates the quarterly monitor results. The area has been redesignated as attainment of the NAAQS for lead and there have not been any monitored exceedances.

We are also taking final action to approve the revision to rule 10 CSR 10–6.120, Restriction of Emissions of Lead From Specific Lead Smelter-Refinery Installations, which was submitted to us on May 6, 2003. The revision to this rule pertains to the Doe Run Resource Recycling Facility and lowers the maximum daily throughput limit for the Blast Furnace from 1000 tons per day (tpd) to 786 tpd. It raises the limits for the Reverbatory Furnace from 360 tpd to 500 tpd and the limits for the Rotary Melt Furnace from 240 tpd to 300 tpd. There is a net reduction in the short-term throughput for three separate units. The blast furnace unit with the largest emission rate (104 pounds per ton (lbs/ton)) was the only unit whose throughput was reduced. The two other units had higher throughput increases but lower emission rates: Reverberatory furnace (65 lbs/ton) and rotary melt (32 lbs/ton). Since all units are vented to the same stack, these changes will result in a reduction of ambient lead concentrations. There is no net increase in maximum daily throughput so the maximum potential lead emissions are expected to decrease. This will also allow the company greater operational flexibility without increasing net lead emissions. It will also maintain the NAAQS for lead.

The Doe Run Resource Recycling Facility is limited by permit to 140,000 tons per year for production. Doe Run estimates that the Facility will increase potential production from 140,000 tons per year to 175,000 tons per year. The proposed increase is subject to approval by Missouri under its construction permitting program. A condition of granting such a permit is modeling the new potential emission and showing that the new plant configuration will not exceed any allowable prevention of significant deterioration (PSD) increment or NAAQS including the NAAQS for lead.

Approval of this revision does not impact or modify the existing Doe Run permit. Moreover this approval in no way affects Doe Run's obligation to comply with the production limitations under the current PSD permit.

Have the Requirements for Approval of a SIP Revision Been Met?

The state submittals have met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittals also satisfied the completeness criteria of 40 CFR part 51,

appendix V. In addition, as explained above and in more detail in the technical support document which is part of this document, the revisions meet the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

What Action Is EPA Taking?

We are taking final action to approve the submission for the Doe Run Resource Recycling Facility near Buick, Missouri, as an amendment to the SIP. The effective date is December 5, 2002.

We are also taking final action to approve the revision to rule 10 C.S.R. 10–6.120, Restriction of Emissions of Lead From Specific Lead Smelter-Refinery Installations, as an amendment to the SIP. The effective date is April 30, 2003.

We are processing this action as a direct final action because the revisions make routine changes to the existing rules which are noncontroversial. Therefore, we do not anticipate any adverse comments. Please note that if EPA receives relevant adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

Statutory and Executive Order Reviews

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

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. 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 CAA. 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 CAA. 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 25, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: August 9, 2004.

James B. Gulliford,

Regional Administrator, Region 7.

■ 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 AA—Missouri

■ 2. Section 52.1320 is amended:

■ a. In the table to paragraph (c) under Chapter 6 by revising the entry for 10–6.120.

■ b. In the table to paragraph (e) by adding an entry at the end of the table.

The revision and addition read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				
* *	*	*	*	*
Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri				
* *	*	*	*	*
10–6.120	Restriction of Emissions of Lead From Specific Lead Smelter-Refinery Installations.	4/30/03	8/24/04 [insert FR page citation].	
* *	*	*	*	*

* * * * * (e) * * *

EPA-APPROVED MISSOURI NONREGULATORY SIP PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanation
* *	*	*	*	*
Revised Maintenance Plan of Doe Run Resource Recycling Facility near Buick, MO.	Dent Township in Iron County	4/29/03	8/24/04 [insert FR page citation].	Furnace daily throughput limits required to be consistent with rule 10 CSR 10–6.120. Annual production cap in Doe Run construction permit not affected by this rulemaking.

[FR Doc. 04–19337 Filed 8–23–04; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[R07–OAR–2004–MO–0003; FRL–7804–3]

Approval and Promulgation of Implementation Plans; State of Missouri; Designation of Areas for Air Quality Planning Purposes, Iron County; Arcadia and Liberty Townships; Withdrawal of Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: On June 30, 2004 (69 FR 39337), EPA published a direct final rule announcing the redesignation of the lead nonattainment area in Iron County, Missouri, to attainment of the National Ambient Air quality Standard (NAAQS) for lead and announcing the approval of the maintenance plan for this area including a settlement agreement. The direct final action was published without prior proposal because EPA anticipated no adverse comment. EPA stated in the direct final rule that if EPA received adverse comment by July 30, 2004, EPA would publish a timely withdrawal in the **Federal Register**. EPA subsequently received a timely adverse comment on the direct final rule. Therefore, EPA is withdrawing the direct final approval. EPA will address the comment in a subsequent final action based on the parallel proposal also published on June 30, 2004 (69 FR 39382). As stated in the parallel proposal, EPA will not institute a second comment period on this action.

DATES: The direct final rule published on June 30, 2004, at 69 FR 39337, is withdrawn as of August 24, 2004.

FOR FURTHER INFORMATION CONTACT: James Hirtz at (913) 551–7472 or by e-mail at *hirtz.james@epa.gov*.

List of Subjects

40 CFR Part 52

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

40 CFR Part 81

Environmental protection, Air pollution control, Lead, National parks, Wilderness area.

Dated: August 12, 2004.

William A. Spratlin,

Acting Regional Administrator, Region 7.

■ Accordingly, the revision to 40 CFR 52.1320 and 40 CFR 81.326, published in the **Federal Register** on June 30, 2004 (69 FR 39337), which was to become effective on August 30, 2004, is withdrawn.

[FR Doc. 04–19230 Filed 8–23–04; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[R07–OAR–2004–IA–0003; FRL–7805–4]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is proposing to approve a revision to the Iowa section 111(d) plan for the purpose of adopting by reference the commercial and industrial solid waste incineration (CISWI) rule that was Federally promulgated on October 3, 2003. The rule contains 11 major components that address the regulatory requirements applicable to existing CISWI units. When adopted by reference, these components will constitute the state plan.

DATES: This direct final rule will be effective October 25, 2004, without further notice, unless EPA receives adverse comment by September 23, 2004. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R07–OAR–2004–IA–0003, by one of the following methods:

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

2. Agency Web site: *http://docket.epa.gov/rmepub/*. RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select "quick search;" then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.

3. E-mail: *hamilton.heather@epa.gov*.

4. Mail: Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

5. Hand Delivery or Courier. Deliver your comments to Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Instructions: Direct your comments to RME ID No. R07–OAR–2004–IA–0003. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://docket.epa.gov/rmepub/*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, regulations.gov, or e-mail. The EPA RME Web site and the Federal regulations.gov Web site are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the RME index at *http://docket.epa.gov/rmepub/*. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. The Regional Office's official hours of business are Monday through Friday, 8 to 4:30 excluding Federal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Heather Hamilton at (913) 551–7039, or by e-mail at *hamilton.heather@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This section provides additional information by addressing the following questions:

What is a Clean Air Act Section 111(d) State Plan?

What is being addressed in this document?

What action is EPA taking?

What Is a Clean Air Act Section 111(d) State Plan?

Section 111(d) of the CAA requires states to submit plans to control certain pollutants (designated pollutants) at existing facilities (designated facilities) whenever standards of performance have been established under section 111(b) of the same type, and EPA has established emission guidelines for such existing sources. A designated pollutant is any pollutant for which no air quality criteria have been issued, and which is not included on a list published under section 108(a) or section 112(b)(1)(A) of the CAA, but emissions of which are subject to the standard of performance for new stationary sources.

The EPA proposed emission guidelines and compliance schedules for CIWSI units on November 30, 1999, and promulgated them on December 1, 2000 (40 CFR part 60, subpart DDDD). Subpart DDDD provided model emission guidelines and compliance schedules for states to use in the development of state plans and to implement and enforce the emission guidelines. The Federal plan was promulgated on October 3, 2003, as Subpart III of 40 CFR part 62, and became effective on November 3, 2003.

What Is Being Addressed in This Document?

The state of Iowa has requested a revision to the CAA section 111(d) state plan to adopt by reference subpart III of 40 CFR part 62, the CISWI rule that was Federally promulgated on October 3, 2003. Subpart III contains eleven components that address the regulatory requirements applicable to existing CISWI units. This rule became effective in the state of Iowa on April 21, 2004. When adopted by reference, these components will constitute a state plan. EPA Region 7 and the State of Iowa have a Delegation Agreement of Authority for New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants under sections 111 and 112 of the Clean Air Act.

What Action Is EPA Taking?

EPA is approving this revision for adoption by reference of Subpart III of 40 CFR part 62 to the Iowa CAA Section 111(d) state plan. Subpart III contains

eleven major components that address the regulatory requirements applicable to existing CISWI units. When this revision is finalized, these components will constitute the state plan. The components include increments of progress toward compliance, waste management plans, operator training and qualification, emission limitations and operating limits, performance testing, initial compliance requirements, continuous compliance requirements, monitoring, recordkeeping and reporting, definitions, and associated tables.

This revision will establish emission requirements and compliance schedules for the control of emissions from existing CIWSI units that commenced construction on or before November 30, 1999. The Monsanto Company, Muscatine, Iowa, is the only identified facility in Iowa to which this applies. The Monsanto company was granted an extension of initial compliance until October 2004, by EPA Region 7.

It should be noted that for purposes of this adoption by reference, references that refer to EPA's authority will be IDNR's authority except for § 62.14838, "What authorities are withheld by the EPA Administrator?"

We are processing this action as a direct final action because the revision makes routine changes to the existing rules which are noncontroversial. Therefore, we do not anticipate any adverse comments. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

Statutory and Executive Order Reviews

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

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. 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 state plan submissions, our role is to approve state choices, provided that they meet the criteria of the CAA. 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 state submissions for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews state submissions, to use VCS in place of a state program that otherwise satisfies the provisions of the CAA. 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 October 25, 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 62

Environmental Protection, Air pollution control, Intergovernmental relations, Municipal waste combustion units, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Waste treatment and disposal.

Dated: August 12, 2004.

William A. Spratlin,

Acting Regional Administrator, Region 7.

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

PART 62—[AMENDED]

■ 1. The authority citation for Part 62 continues to read as follows:

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

Subpart Q—Iowa

■ 2. Subpart Q is amended by adding an undesignated center heading and § 62.3916 to read as follows:

Air Emissions From Existing Commercial and Industrial Solid Waste Incineration Units

§ 62.3916 Identification of Plan.

(a) *Identification of plan.* The Iowa Department of Natural Resources approved this revision to the 567 Iowa Administrative Code, 23.1(5)(455B) to the State of Iowa section 111(d) plan for the purpose of adopting by reference subpart III of 40 CFR part 62, the commercial and industrial solid waste incineration rule, which became effective on April 21, 2004. For purposes of this adoption by reference, references that refer to EPA's authority

will be IDNR's authority except for § 62.14838, "What authorities are withheld by the EPA Administrator?" This revision was submitted on June 29, 2004.

(b) *Identification of sources.* The plan applies to all applicable existing Commercial and Industrial Solid Waste Incineration Units for which construction commenced on or before November 30, 1999.

(c) *Effective date.* The effective date of the plan is October 25, 2004.

[FR Doc. 04–19335 Filed 8–23–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[WT Docket No. 00–32; FCC 04–185]

Suspension of Effective Date in 47 CFR 90.1211(a)

AGENCY: Federal Communications Commission.

ACTION: Final rule; suspension of effectiveness.

SUMMARY: In this document, the Commission grants a petition for stay of the *Memorandum Opinion and Order and Third Report and Order,* 68 FR 38635, June 30, 2003, released on May 2, 2003, in this proceeding. Specifically, the FCC stays the effectiveness of 47 CFR 90.1211(a), which authorizes 700 MHz Regional Planning Committees to submit regional plans for the sharing of the 4.9 GHz spectrum, and requiring such plans to be submitted to the Commission within twelve months after the effective date of the rules. The *Memorandum Opinion and Order and Third Report and Order* was published in the **Federal Register** on June 30, 2003, with an effective date of July 30, 2003. Regional Planning Committee plans for the shared use of the 4.9 GHz spectrum were due July 30, 2004. A temporary stay of the July 30, 2004 deadline is granted until six months after resolution of a pending petition for reconsideration filed in this proceeding.

DATES: Effective September 23, 2004, 47 CFR 90.1211(a) is stayed temporarily. The Commission will publish a document in the **Federal Register** announcing a new effective date.

FOR FURTHER INFORMATION CONTACT: Jeannie Benfaida, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau, at (202) 418–0680.

SUPPLEMENTARY INFORMATION: This is a summary of the *Order,* released on August 2, 2004. The full text of this document is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *joshir@erols.com.* The full text may also be downloaded at: *http://www.fcc.gov/Wireless/Orders/2004/fcc040185.txt.* Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365.

In the *Order,* the Commission stayed the effectiveness of 47 CFR 90.1211(a), which authorizes the fifty-five 700 MHz Regional Planning Committees to develop and submit a plan on guidelines to be used for sharing the 4.9 GHz spectrum within the region to the Commission within twelve months of the effective date of the *Memorandum Opinion and Order and Report and Order,* 68 FR 38635, June 30, 2003, which established licensing and service rules for the 4940–4990 MHz (4.9GHz) band. Given the uncertainty created by the pendency of the petition for reconsideration, twelve months has not been enough time for RPCs to complete plans for the sharing of the 4.9 GHz spectrum. The stay will remain in effect until six months after the resolution of the petition for reconsideration of the *Memorandum Opinion and Order and Report and Order,* released on May 2, 2003, in this proceeding.

The Commission will not send a copy of this *Order* in a report to be sent to Congress and the Government Accountability Office (GAO) pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because the *Order* stays the effectiveness of a final rule.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–19359 Filed 8–23–04; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 69, No. 163
Tuesday, August 24, 2004

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 93

[Docket No. 03–081–3]

Tuberculosis in Cattle; Import Requirements

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the animal importation regulations to require that steers and spayed heifers with any evidence of horn growth that are entering the United States meet the same tuberculosis testing requirements as sexually intact animals entering the United States. In their current form, the regulations do not distinguish between steers and spayed heifers imported strictly as feeders and those with horn growth, which may be used for exhibitions, rodeos, and roping and bulldogging practices. Animals used for these purposes are often maintained longer than feeder cattle. The longer the life span of an animal, the greater the chances are that, if exposed to tuberculosis, it will contract the disease, develop generalized disease, and spread it to other animals. We believe that the risks of tuberculosis transmission associated with steers and spayed heifers with horn growth justify regulating the importation of such animals in a manner equivalent to the way we regulate sexually intact cattle, which also have longer life spans than feeder cattle and are consequently more likely to spread tuberculosis if they have been exposed to that disease. These changes are intended to reduce the risk of imported cattle transmitting tuberculosis to domestic livestock in the United States.

DATES: We will consider all comments that we receive on or before October 25, 2004.

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

- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 03–081–3, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 03–081–3.
- E-mail: Address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 03–081–3" on the subject line.
- Agency Web site: Go to *http://www.aphis.usda.gov/ppd/rad/cominst.html* for a form you can use to submit an e-mail comment through the APHIS Web site.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov* and follow the instructions for locating this docket and submitting comments.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

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

FOR FURTHER INFORMATION CONTACT: Dr. Terry Beals, National Tuberculosis Program Coordinator, Eradication and Surveillance Team, National Center for Animal Health Programs, VS, APHIS, 4020 N. Lincoln Blvd., Suite 101, Oklahoma City, OK 73105; (405) 427–2998.

SUPPLEMENTARY INFORMATION:

Background

[**Note:** The provisions described in this proposed rule were originally published in the **Federal Register** on July 20, 2004 (69 FR 43283–43285, Docket No. 03–081–1), as an interim rule scheduled to become effective on August 19, 2004. Prior to its effective date, however, we withdrew the July 2004 interim rule (see 69 FR 49783, Docket No. 03–081–2, published August 12, 2004).]

The regulations in 9 CFR part 93 prohibit or restrict the importation of certain animals, birds, and poultry into the United States to prevent the introduction of communicable diseases of livestock and poultry. Subpart D of part 93 (§§ 93.400 through 93.435, referred to below as the regulations) governs the importation of ruminants. Section 93.406 of the regulations contains requirements for diagnostic tests for brucellosis and tuberculosis. Section 93.427 contains some additional safeguards against tick-borne diseases, brucellosis, and tuberculosis for cattle imported into the United States from Mexico.

Bovine tuberculosis is an infectious disease caused by the bacterium *Mycobacterium bovis*. Although commonly defined as a chronic debilitating disease, bovine tuberculosis can occasionally assume an acute, rapidly progressive course. While body tissue can be affected, lesions are most frequently observed in the lymph nodes, lungs, intestines, liver, spleen, pleura, and peritoneum. Although cattle are considered to be the true hosts of *M. bovis*, the disease has been reported in several other species of both domestic and nondomestic animals and in humans. Currently, all areas of the United States are considered to be free of bovine tuberculosis except for Texas, Michigan, New Mexico, and California.

Currently, the regulations for tuberculosis treat imported steers and spayed heifers differently from imported sexually intact cattle. Under § 93.406(a)(2)(i), steers and spayed heifers must have come from a herd of origin that tested negative to a whole herd test for tuberculosis within 1 year prior to the date of exportation to the United States; each of the animals must have tested negative to an additional official tuberculin test conducted within 60 days prior to the date of exportation to the United States; and any individual cattle that had been added to the herd must have tested negative to any individual tests for tuberculosis required by the Administrator. For sexually intact cattle from an accredited herd (a herd that has passed at least two consecutive annual official tuberculin

tests and has no evidence of tuberculosis), the herd must have been certified as an accredited herd for tuberculosis within 1 year prior to the date of exportation to the United States. Sexually intact cattle not from an accredited herd must have originated from a herd of origin that tested negative to a whole herd test for tuberculosis within 1 year prior to the date of exportation to the United States. Each of these animals must also have tested negative to one additional official tuberculin test conducted no more than 6 months and no less than 60 days prior to the date of exportation to the United States, unless the animals are exported within 6 months of when the herd of origin tested negative to a whole herd test, in which case the additional test is not required. In addition, any individual cattle that had been added to the herd must have tested negative to any individual tests for tuberculosis required by the Administrator.

The higher level of risk of tuberculosis transmission associated with sexually intact cattle accounts for their more stringent regulatory treatment. Steers and spayed heifers are often imported as feeders and slaughtered before the age of 2 years. They usually graze with other feeders before being taken to feedlots and, subsequently, to slaughter. Sexually intact cattle, on the other hand, are typically imported for breeding purposes, and their average life span ranges from 7 to 12 years. The longer the life span of an animal, the greater the chances are that, if exposed to tuberculosis, it will contract the disease, develop generalized disease, and spread it to other animals. In addition, since bovine tuberculosis may be spread by nursing or aerosolization, an infected breeding cow may not only spread the disease to the other breeding cattle with which she is kept, but also to her offspring or the offspring of other breeding cattle.

Some imported steers and spayed heifers, however, have also been associated with higher levels of tuberculosis risk. Cattle with horn growth (*i.e.*, cattle that are not polled or dehorned; hereafter referred to as exhibition animals) may be used for exhibitions, rodeos, and roping and bulldogging practices. Cattle used for these purposes are more expensive than feeder animals and are often maintained longer. In addition, exhibition animals are managed much differently than feeder animals. Exhibition animals are housed in or near arenas for rodeo events and practice sessions. When the season is over, these animals may be commingled with breeding animals or herds during the winter. This routine practice may be repeated over the course of 2 to 5 years. Consequently, exhibition animals have historically exhibited a significantly higher risk of spreading tuberculosis than have feeder cattle. It is our view that the risks presented by exhibition animals justify regulating their importation in a manner equivalent to the way we regulate sexually intact cattle.

In their current form, the regulations do not distinguish between steers and spayed heifers imported strictly as feeders and those whose horn growth may enable them to be used in exhibitions. Because steers or spayed heifers with horn growth are far more likely to be imported for use in exhibitions than those without horn growth, they may be associated with the additional risk factors described in the previous paragraph. Therefore, in order to offer greater protection to U.S. livestock herds against tuberculosis, we are proposing to amend the regulations in § 93.406(a)(2) to require that steers or spayed heifers intended for importation into the United States that have any evidence of horn growth meet the same tuberculosis testing requirements as sexually intact cattle imported into the United States. In addition, we are proposing to amend § 93.427(c)(3), which provides, among other things, for the detention at the U.S. port of entry of sexually intact cattle from Mexico until the cattle are tested for tuberculosis with negative results. Under this proposed rule, steers or spayed heifers from Mexico with any evidence of horn growth would also be subjected to this requirement.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This proposed rule would amend the animal importation regulations in §§ 93.406 and 93.427 to require that steers and spayed heifers with any evidence of horn growth that are entering the United States meet the same tuberculosis testing requirements as sexually intact animals entering the United States. This action is intended to reduce the risk of imported cattle transmitting tuberculosis to domestic livestock in the United States.

The cattle industry plays an important role in the U.S. economy. Cash receipts from sales of meat, animals, and milk totaled about $65 billion in 2001.[1] Additionally, cattle and related product exports generated over $3 billion in sales. Other agricultural and nonagricultural sectors are highly dependent on the cattle industry for their economic activity. Maintaining favorable economic conditions for U.S. agriculture depends, in part, on continued aggressive efforts to eradicate tuberculosis from the U.S. cattle population.

Historically, most U.S. imports of live cattle and calves have come from Canada and Mexico. The United States imported 2,502,973 live cattle and calves in 2002, which were valued at $1,447 million. Of these, 1,686,508 were from Canada, and 816,460 were from Mexico.[2] Steers and spayed heifers that have horn growth and may be used for rodeo exhibitions are most likely to come to the United States from Mexico. In 2002, the number of steers from which roping steers were likely to be drawn totaled 747,069 or 91.5 percent of total imports from Mexico.[3] Of this total, about 6 percent are believed to be roping steers.

This proposed rule would result in an additional tuberculosis testing requirement for steers and spayed heifers with horn growth imported into the United States, entailing some additional costs for importers. The cost of tuberculin testing is between $7.50 and $10 per head. The weighted average price of an imported steer from Mexico, which would likely be the source of most of the animals affected by this proposed rule, in 2002 was $364. The cost of the additional tuberculosis test represents about 2.4 percent of that value. If supply does not change as a result of the cost increase, U.S. importers would incur overall additional costs of between $336,180 and $549,000 annually. The exact impact of a 2.4 percent increase in cost on the supply of cattle from Mexico is unknown, but the possibility exists that the cost increase could decrease the supply of cattle from Mexico and increase lease fees and/or roping steer purchase prices.

The Regulatory Flexibility Act requires that agencies specifically consider the economic effects of their rules on small entities. Entities that

[1] USDA/ERS, U.S. and State Farm Income Data/Farm Cash Receipts, 1924–2001, Tables 5—Cash Receipts, by Commodity groups and Selected Commodities, United States and States, 1997–2001 Revised July 23, 2002.

[2] USDA/ERS, Foreign Agricultural Trade of the United States, February 2003.

[3] Source: Global Trade Information Services Inc., the World Trade Atlas—United States Edition, June 2003; APHIS/VS Import Tracking System National Database.

could be affected by this proposed rule include U.S. order buyers that import steers from Mexico and cow-calf operations that sell steers comparable in age and size to those imported from Mexico. The Small Business Administration (SBA) classifies cow-calf and stocker operations as small entities if their annual receipts are $750,000 or less. There were 1,032,000 of these operations in the United States in 2002, and over 99 percent were considered small. This proposed rule could also affect industries that purchase and lease roping steers for their shows. The number and size distributions of this industry are not available, but their sizes are likely to be small. Additionally, as these animals retire from roping service, they are likely to be sold to feedlots, so some feedlots could also be affected. The SBA classifies cattle feedlots as small entities if their annual receipts are not more than $1.5 million. There were 95,189 feedlots in the United States in 2002, of which about 93,000 (nearly 98 percent) had capacities of fewer than 1,000 head. Average annual receipts for these small feedlots totaled about $35,300, a figure well below the SBA's small-entity criterion. However, as of January 1, 2003, the remaining 2 percent of the Nation's feedlots, which had capacities of at least 1,000 head, held 82 percent of all U.S. cattle and calves on feed.

This proposed rule could lead to increased costs for U.S. importers of roping steers and a decrease in the number of roping steers imported from Mexico. Any negative economic impacts for U.S. importers could be offset somewhat by the benefits that could accrue to U.S. cow-calf operations that sell or lease domestic roping steers if the price of those steers rises. In addition, if any increase in U.S. feeder cattle prices were to result from the proposed changes, U.S. cow-calf and stocker domestic operations would gain from a stronger market.

The overall benefits to the U.S. livestock industry of reducing the risk of importing tuberculosis-infected cattle by requiring additional testing for steers and spayed heifers with horn growth are expected to be of far greater significance than any other economic impacts, whether positive or negative, of this proposed rule.

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

Executive Order 12988

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

Paperwork Reduction Act

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

List of Subjects in 9 CFR Part 93

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, we propose to amend 9 CFR part 93 as follows:

PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

1. The authority citation for part 93 would continue to read as follows:

Authority: 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

§ 93.406 [Amended]

2. Section 93.406 would be amended as follows:

a. In paragraph (a)(2)(i), by adding the words "without evidence of horn growth (polled or dehorned)" after the word "heifers".

b. In paragraph (a)(2)(ii), by adding the words "and steers or spayed heifers with any evidence of horn growth" after the word "cattle".

c. In paragraph (a)(2)(iii), by adding the words "and steers or spayed heifers with any evidence of horn growth" after the words "intact cattle".

§ 93.427 [Amended]

3. In § 93.427, paragraph (c)(3) would be amended by adding the words "and steers or spayed heifers with any evidence of horn growth" after the word "cattle".

Done in Washington, DC, this 19th day of August 2004.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–19313 Filed 8–23–04; 8:45 am]

BILLING CODE 3410–34–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404, 408 and 416

[Regulations No. 4, 8 and 16]

RIN 0960–AG06

Expanded Authority for Cross-Program Recovery of Benefit Overpayments

AGENCY: Social Security Administration.

ACTION: Proposed rules.

SUMMARY: To implement part of the Social Security Protection Act (SSPA) of 2004, we propose to revise our regulations on the recovery of overpayments incurred under one of our programs from benefits payable to the overpaid individual under other programs we administer. Provisions of the SSPA expand the authority for cross-program recovery of overpayments made in our various programs. Implementation of these proposed regulatory revisions when they become effective will yield significant program savings.

DATES: To be sure that we consider your comments, we must receive them by September 23, 2004.

ADDRESSES: You may give us your comments by: using our Internet site facility (*i.e.*, Social Security Online) at *http://policy.ssa.gov/pnpublic.nsf/LawsRegs* or the Federal eRulemaking Portal at *http://www.regulations.gov*; e-mail to *regulations@ssa.gov*; telefax to (410) 966–2830; or letter to the Commissioner of Social Security, P.O. Box 17703, Baltimore, Maryland 21235–7703. You may also deliver them to the Office of Regulations, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, between 8 a.m. and 4:30 p.m. on regular business days. Comments are posted on our Internet site at *http://policy.ssa.gov/pnpublic.nsf/LawsRegs* or you may inspect them on regular business days by making arrangements with the contact person shown in this preamble.

Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.gpoaccess.gov/fr/index.html*. It is also available on the Internet site for

SSA (*i.e.*, Social Security Online) at *http://policy.ssa.gov/pnpublic.nsf/LawsRegs*.

FOR FURTHER INFORMATION CONTACT: Richard Bresnick, Social Insurance Specialist, Office of Regulations, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–1758 or TTY (410) 966–5609. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov*.

SUPPLEMENTARY INFORMATION:

Background

Section 210 of the SSPA, Public Law (Pub. L.) 108–203, enacted on March 2, 2004, significantly expands our ability to recover overpayments made in one of our programs from benefits payable to the overpaid individual under other programs we administer. These programs are Social Security benefits under title II of the Social Security Act (the Act), Special Veterans Benefits (SVB) under title VIII of the Act and Supplemental Security Income (SSI) benefits under title XVI of the Act.

Prior to enactment of the SSPA, sections 808, 1147 and 1147A of the Act allowed cross-program adjustment to recover overpayments as follows:

- We could withhold no more than 10 percent of any title II benefit payment (*i.e.*, a current monthly payment and a past-due payment) to recover an SSI overpayment, if the person is not currently eligible for SSI;
- We could withhold any title II benefit payment to recover an SVB overpayment, if the person is not qualified for SVB;
- We could withhold no more than 10 percent of any SVB payment to recover an SSI overpayment, if the person is not currently eligible for SSI;
- We could withhold any SVB payment to recover a title II overpayment, if the person is not currently receiving title II benefits.

The Act did not allow us to withhold SSI payments to recover title II or SVB overpayments.

Section 210 of the SSPA repealed section 1147A and cross-program recovery provisions in section 808 of the Act and amended section 1147 to expand our cross-program recovery authority to allow recovery of an overpayment occurring under any of these programs from benefits or payments due in any other of these programs at a rate not to exceed 10 percent of the monthly benefit. It allows for unlimited withholding of past-due benefits in one program to recover an overpayment paid under another program. It also allows for cross-program recovery even if the individual is entitled under the program in which the overpayment was made.

Explanation of Proposed Changes

We propose to change the regulations in 20 CFR parts 404, 408 and 416 to reflect the expanded cross-program recovery authority.

Currently, part 404 has no provisions permitting cross-program recovery, since that option has not been applied to collect title II benefit overpayments. In part 404, we propose to add new §§ 404.530, .535, .540, and .545, which parallel existing regulations at §§ 408.930 through 408.933, to include the expanded authority to recover title II overpayments as follows:

- We may withhold from a current monthly SSI payment no more than the lesser of that payment or 10 percent of the monthly income to recover a title II overpayment;
- We may withhold no more than 10 percent of current monthly SVB payments to recover a title II overpayment;
- We may withhold up to 100 percent of SSI and SVB past-due payments to recover a title II overpayment.

We propose to change §§ 408.930 through 408.933 to reflect the expanded authority to recover title VIII overpayments as follows:

- We may withhold from a current monthly SSI payment no more than the lesser of that payment or 10 percent of the monthly income to recover an SVB overpayment;
- We may withhold no more than 10 percent of current monthly title II benefits to recover an SVB overpayment;
- We may withhold up to 100 percent of title II and SSI past-due payments to recover an SVB overpayment.

We propose to change the regulations at § 416.570 to delete obsolete information. We propose to change the regulations at § 416.572 and add §§ 416.573, .574, and .575 to reflect the expanded authority to recover title XVI overpayments as follows:

- We may withhold no more than 10 percent of current monthly title II benefits to recover an SSI overpayment;
- We may withhold no more than 10 percent of current monthly SVB payments to recover an SSI overpayment;
- We may withhold up to 100 percent of title II and SVB past-due payments to recover an SSI overpayment.

The new sections follow the same structure as the existing regulations at §§ 408.930 through 408.933. We believe that this format is easy for members of the public to understand. We propose to remove the title II example from § 416.572 because the example illustrated how we applied the 10 percent limit to past-due title II benefits. Under the new law, this limitation no longer applies. We propose to remove the title VIII example from § 416.572 because we have added a cross-reference to the title VIII regulations that explain how title VIII benefits are computed. We propose to remove from the SVB and SSI regulations the provisions that preclude cross-program recovery when the overpaid person is currently eligible for payment under the program from which we made the overpayment. The amended statute does not contain that restriction. Proposed § 416.572(b) also states that if we are already making recovery from title II benefits, the maximum amount which may be withheld from title XVI monthly benefits is the lesser of the person's title XVI benefit for that month or 10 percent of the person's total income for that month, not including the title II income used to compute the title XVI benefit.

Like the current regulations in 20 CFR part 408, subpart I, and part 416, subpart E, the proposed regulations for each program require that, before we impose cross-program recovery, we would notify the overpaid person of the proposed action and allow the overpaid person an opportunity to pay the remaining balance of the overpayment debt, to request review of the status of the debt, to request waiver of recovery, and to request recovery of the debt from current monthly benefits at a different rate than that stated in the notice. We would not begin cross-program recovery from current monthly benefits until 30 calendar days have elapsed after the date of the notice. If within that time period the person requests review of the debt, waiver of recovery of the debt, or reduction of the rate of recovery from current monthly benefits stated in the notice, we would not take any action to reduce current monthly benefits before we notify the debtor of our determination on the request. As permitted by section 1147(b)(2)(A) of the Act, the regulations provide that, if we find that the overpaid person or that person's spouse was involved in willful misrepresentation or concealment of material information in connection with the overpayment, we could withhold the entire amount of the current monthly benefit.

Clarity of These Rules

Executive Order (E.O.) 12866, as amended by E.O. 13258, requires each

agency to write all rules in plain language. In addition to your substantive comments on these proposed rules, we invite your comments on how to make them easier to understand. For example:

- Have we organized the material to suit your needs?
- Are the requirements in the rules clearly stated?
- Do the rules contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rules easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rules easier to understand?

Regulatory Procedures

Executive Order 12866

In view of our need to balance our stewardship responsibilities to the public and the public funds we administer with our responsibility to provide the public the opportunity to comment on our proposed rules, we are providing a 30-day comment period for these proposed rules rather than the 60-day period we usually provide. We believe that, in this instance, a 30-day period is sufficiently long to allow the public a meaningful opportunity to comment on the proposed rules, in accordance with E.O. 12866. The proposed rules are not especially complicated. They contain many of the same policies, practices and procedures that we already apply under current regulations at §§ 408.930 through 408.933 and 416.572. The public had a 60-day period to comment on the current regulations before they were published as final rules. As we stated above, these proposed rules, when published in final, would implement section 210 of the SSPA. The impetus for this legislation was, in large part, the processing of a large number of title II claims (the Special Disability Workload) with potentially large title II underpayments payable to individuals who owe outstanding SSI overpayments. Under the current regulations (§ 416.572), we can only withhold 10 percent of past-due title II benefits to recover the SSI overpayments in these cases, but the SSPA allows up to 100 percent withholding of past-due benefits. The sooner the changes are made, the more significant the program savings will be.

We have consulted with the Office of Management and Budget (OMB) and determined that these proposed rules meet the requirements for a significant regulatory action under E.O. 12866, as amended by E.O. 13258. Thus, they were subject to OMB review.

Regulatory Flexibility Act

We certify that these proposed rules, when published in final, would not have a significant economic impact on a substantial number of small entities because it affects only individuals. Thus, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These proposed rules contain reporting requirements at § 408.932(c), (d) and (e). The public reporting burden for these requirements has been cleared by the Office of Management and Budget under OMB No. 0960–0683, expiring 01/31/2007.

There are also reporting requirements at proposed §§ 404.540(c), (d) and (e) and 416.574(c), (d) and (e). The public reporting burden is accounted for in the Information Collection Requests for the various forms that the public uses to submit the information required by these rules to SSA. Consequently, a 1-hour placeholder burden is being assigned to the specific reporting requirements contained in these rules. An Information Collection Request has been submitted to OMB. While these rules will be effective upon publication in final, these burdens will not be effective until cleared by OMB. We are soliciting comments on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. We will publish a notice in the **Federal Register** upon OMB approval of the information collection requirements. Comments should be submitted and/or faxed to the OMB desk officer for SSA and to SSA at the following addresses/fax numbers:

Office of Management and Budget, Attn: Desk Officer for SSA, Fax Number: 202–395–6974.

Social Security Administration, Attn: SSA Reports Clearance Officer, Rm. 1338 Annex, 6401 Security Boulevard, Baltimore, MD 21235–6401. Fax number: 410–965–6400.

Comments can be received for up to 60 days after publication of this notice and will be most useful if received within 30 days from publication of these proposed rules. To receive a copy of the OMB clearance package, you may call the SSA Reports Clearance Officer on 410–965–0454.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.004, Social Security-Survivors Insurance; 96.006, Supplemental Security Income; and 96.020, Special Benefits for Certain World War II Veterans.)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-age, Survivors and disability insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 408

Administrative practice and procedure, Aged, Reporting and recordkeeping requirements, Social Security, Special veterans benefits, Veterans.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: July 19, 2004.

Jo Anne B. Barnhart,

Commissioner of Social Security.

For the reasons set out in the preamble, we propose to amend subpart F of part 404, subpart I of part 408 and subpart E of part 416 of chapter III of title 20 of the Code of Federal Regulations as set forth below:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart F—[Amended]

1. The authority citation for subpart F of part 404 is revised to read as follows:

Authority: Secs. 204, 205(a), 702(a)(5), and 1147 of the Social Security Act (42 U.S.C. 404, 405(a), 902(a)(5), and 1320b–17; 31 U.S.C. 3720A.

2. Sections 404.530, .535, .540 and .545 are added to read as follows:

§ 404.530 Are title VIII and title XVI benefits subject to adjustment to recover title II overpayments?

(a) Definitions—(1) *Cross-program recovery.* Cross-program recovery is the process that we will use to collect title II overpayments from benefits payable to you under title VIII and title XVI of the Act.

(2) *Benefits payable.* For purposes of this section, benefits payable means the

amount of title VIII or title XVI benefits you actually would receive. For title VIII benefits, it includes your monthly benefit and any past-due benefits after any reduction by the amount of income for the month as described in §§ 408.505 through 408.515 of this chapter. For title XVI benefits, it includes your monthly benefit and any past-due benefits as described in § 416.420 of this chapter.

(b) *When may we collect title II overpayments using cross-program recovery?* Except as provided in paragraphs (b)(1) through (b)(3) of this section, we may use cross-program recovery to collect a title II overpayment you owe when benefits are payable to you under title VIII, title XVI, or both.

(1) We will not apply cross-program recovery against your title VIII or title XVI benefits while you are refunding your title II overpayment by regular monthly installments.

(2) We will not apply cross-program recovery against your title VIII benefits while we are recovering a title VIII overpayment by adjusting your title VIII benefits under §§ 408.922 through 408.923 of this chapter.

(3) We will not apply cross-program recovery against your title XVI benefits while we are recovering a title XVI overpayment by adjusting your title XVI benefits under § 416.571 of this chapter.

§ 404.535 How much will we withhold from your title VIII and title XVI benefits to recover a title II overpayment?

(a) If past-due benefits are payable to you, we will withhold the lesser of the entire overpayment balance or the entire amount of past-due benefits.

(b)(1) We will collect the overpayment from current monthly benefits due in a month under title VIII and title XVI by withholding the lesser of the amount of the entire overpayment balance or:

(i) 10 percent of the monthly title VIII benefits payable for that month and

(ii) in the case of title XVI benefits, an amount no greater than the lesser of the benefit payable for that month or an amount equal to 10 percent of your income for that month (including such monthly benefit but excluding payments under title II when recovery is also made from title II and excluding income excluded pursuant to §§ 416.1112 and 416.1124 of this chapter).

(2) Paragraph (b)(1) of this section does not apply if:

(i) You request and we approve a different rate of withholding, or

(ii) You or your spouse willfully misrepresented or concealed material information in connection with the overpayment.

(c) In determining whether to grant your request that we withhold less than the amount described in paragraph (b)(1) of this section, we will use the criteria applied under § 404.508 to similar requests about withholding from title II benefits.

(d) If you or your spouse willfully misrepresented or concealed material information in connection with the overpayment, we will collect the overpayment by withholding the lesser of the overpayment balance or the entire amount of title VIII and title XVI benefits payable to you. We will not collect at a lesser rate. (*See* § 416.571 of this chapter for what we mean by concealment of material information.)

§ 404.540 Will you receive notice of our intention to apply cross-program recovery?

Before we collect an overpayment from you using cross-program recovery, we will send you a written notice that tells you the following information:

(a) We have determined that you owe a specific overpayment balance that can be collected by cross-program recovery;

(b) We will withhold a specific amount from the title VIII or title XVI benefits (*see* § 404.535);

(c) You may ask us to review this determination that you still owe this overpayment balance;

(d) You may request that we withhold a different amount from your current monthly benefits (the notice will not include this information if § 404.535(d) applies); and

(e) You may ask us to waive collection of this overpayment balance.

§ 404.545 When will we begin cross-program recovery from current monthly benefits?

(a) We will begin collecting the overpayment balance from your title VIII or title XVI current monthly benefits or payments by cross-program recovery no sooner than 30 calendar days after the date of the notice described in § 404.540. If within that 30-day period you pay us the full overpayment balance stated in the notice, we will not begin cross-program recovery.

(b) If within that 30-day period you ask us to review our determination that you still owe us this overpayment balance, we will not begin cross-program recovery from your current monthly benefits before we review the matter and notify you of our decision in writing.

(c) If within that 30-day period you ask us to withhold a different amount than the amount stated in the notice, we will not begin cross-program recovery from your current monthly benefits until we determine the amount we will withhold. This paragraph does not apply when § 404.535(d) applies.

(d) If within that 30-day period you ask us to waive recovery of the overpayment balance, we will not begin cross-program recovery from your current monthly benefits before we review the matter and notify you of our decision in writing. *See* §§ 404.506 through 404.512.

PART 408—SPECIAL BENEFITS FOR CERTAIN WORLD WAR II VETERANS

Subpart I—[Amended]

3. The authority citation for subpart I of part 408 is revised to read as follows:

Authority: Secs. 702(a)(5), 808, and 1147 of the Social Security Act (42 U.S.C. 902(a), 1008, and 1320b–17; 31 U.S.C. 3720A.

4. Section 408.930 is revised to read as follows:

§ 408.930 Are title II and title XVI benefits subject to adjustment to recover title VIII overpayments?

(a) Definitions—(1) *Cross-program recovery.* Cross-program recovery is the process that we will use to collect title VIII overpayments from benefits payable to you under title II or title XVI of the Social Security Act.

(2) *Benefits payable.* For purposes of this section, benefits payable means the amount of title II or title XVI benefits you actually would receive. For title II benefits, it includes your monthly benefit and your past-due benefits after any reductions or deductions listed in § 404.401(a) and (b) of this chapter. For title XVI benefits, it includes your monthly benefit and your past-due benefits as described in § 416.420 of this chapter.

(b) *When may we collect title VIII overpayments using cross-program recovery?* Except as provided in paragraphs (b)(1) through (b)(3) of this section, we may use cross-program recovery to collect a title VIII overpayment you owe when benefits are payable to you under title II, title XVI, or both.

(1) We will not apply cross-program recovery against your title II or title XVI benefits while you are refunding your title VIII overpayment by regular monthly installments.

(2) We will not apply cross-program recovery against your title II benefits while we are recovering a title II overpayment by adjusting your title II benefits under § 404.502 of this chapter.

(3) We will not apply cross-program recovery against your title XVI benefits while we are recovering a title XVI overpayment by adjusting your title XVI benefits under § 416.571 of this chapter.

5. Section 408.931 is revised to read as follows:

§ 408.931 How much will we withhold from your title II and title XVI benefits to recover a title VIII overpayment?

(a) If past-due benefits are payable to you, we will withhold the lesser of the entire overpayment balance or the entire amount of past-due benefits.

(b)(1) We will collect the overpayment from current monthly benefits due in a month under title II and title XVI by withholding the lesser of the amount of the entire overpayment balance or:

(i) 10 percent of the monthly title II benefits payable for that month and

(ii) In the case of title XVI benefits, an amount no greater than the lesser of the benefit payable for that month or an amount equal to 10 percent of your income for that month (including such monthly benefit but excluding payments under title II when recovery is also made from title II and excluding income excluded pursuant to §§ 416.1112 and 416.1124 of this chapter).

(2) Paragraph (b)(1) of this section does not apply if:

(i) You request and we approve a different rate of withholding, or

(ii) You or your spouse willfully misrepresented or concealed material information in connection with the overpayment.

(c) In determining whether to grant your request that we withhold less than the amount described in paragraph (b)(1) of this section, we will use the criteria applied under § 408.923 to similar requests about withholding from title VIII benefits.

(d) If you or your spouse willfully misrepresented or concealed material information in connection with the overpayment, we will collect the overpayment by withholding the lesser of the overpayment balance or the entire amount of title II benefits and title XVI benefits payable to you. We will not collect at a lesser rate. (*See* § 408.923 for what we mean by concealment of material information.)

6. Section 408.932 is revised to read as follows:

§ 408.932 Will you receive notice of our intention to apply cross-program recovery?

Before we collect an overpayment from you using cross-program recovery, we will send you a written notice that tells you the following information:

(a) We have determined that you owe a specific overpayment balance that can be collected by cross-program recovery;

(b) We will withhold a specific amount from the title II or title XVI benefits (see § 408.931(b));

(c) You may ask us to review this determination that you still owe this overpayment balance;

(d) You may request that we withhold a different amount from your current monthly benefits (the notice will not include this information if § 408.931(d) applies); and

(e) You may ask us to waive collection of this overpayment balance.

7. Section 408.933 is revised to read as follows:

§ 408.933 When will we begin cross-program recovery from your current monthly benefits?

(a) We will begin collecting the overpayment balance by cross-program recovery from your title II and title XVI current monthly benefits no sooner than 30 calendar days after the date of the notice described in § 408.932. If within that 30-day period you pay us the full overpayment balance stated in the notice, we will not begin cross-program recovery from your current monthly benefits.

(b) If within that 30-day period you ask us to review our determination that you still owe us this overpayment balance, we will not begin cross-program recovery from your current monthly benefits before we review the matter and notify you of our decision in writing.

(c) If within that 30-day period you ask us to withhold a different amount than the amount stated in the notice, we will not begin cross-program recovery from your current monthly benefits until we determine the amount we will withhold. This paragraph does not apply when § 408.931(d) applies.

(d) If within that 30-day period you ask us to waive recovery of the overpayment balance, we will not begin cross-program recovery from your current monthly benefits before we review the matter and notify you of our decision in writing. *See* §§ 408.910 through 408.914.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart E—[Amended]

8. The authority citation for subpart E of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1147, 1601, 1602, 1611(c) and (e), and 1631(a)–(d) and (g) of the Social Security Act (42 U.S.C. 902(a)(5), 1320b–17, 1381, 1381a, 1382(c) and (e), and 1383(a)–(d) and (g); 31 U.S.C. 3720A.

9. Section 416.570 is revised to read as follows:

§ 416.570 Adjustment—general rule.

When a recipient has been overpaid, the overpayment has not been refunded, and waiver of adjustment or recovery is not applicable, any payment due the overpaid recipient or his or her eligible spouse (or recovery from the estate of either or both when either or both die before adjustment is completed) is adjusted for recovery of the overpayment. Adjustment will generally be accomplished by withholding each month the amount set forth in § 416.571 from the benefit payable to the individual except that, when the overpayment results from the disposition of resources as provided by §§ 416.1240(b) and 416.1244, the overpayment will be recovered by withholding any payments due the overpaid recipient or his or her eligible spouse before any further payment is made. Absent a specific request from the person from whom recovery is sought, no overpayment made under title XVIII of the Act will be recovered by adjusting SSI benefits. In no case shall an overpayment of SSI benefits be adjusted against title XVIII benefits. No funds properly deposited into a dedicated account (*see* §§ 416.546 and 416.640(e)) can be used to repay an overpayment while the overpaid individual remains subject to the provisions of those sections.

10. Section 416.572 is revised and sections 416.573, .574 and .575 are added to read as follows:

§ 416.572 Are title II and title VIII benefits subject to adjustment to recover title XVI overpayments?

(a) Definitions—(1) *Cross-program recovery.* Cross-program recovery is the process that we will use to collect title XVI overpayments from benefits payable to you under title II or title VIII of the Social Security Act.

(2) *Benefits payable.* For purposes of this section, benefits payable means the amount of title II or title VIII benefits you actually would receive. For title II benefits, it includes your monthly benefit and your past-due benefits after any reductions or deductions listed in § 404.401(a) and (b) of this chapter. For title VIII benefits, it includes your monthly benefit and any past-due benefits after any reduction by the amount of income for the month as described in §§ 408.505 through 408.510 of this chapter.

(b) *When may we collect title XVI overpayments using cross-program recovery?* Except as provided in paragraphs (b)(1) through (b)(3) of this section, we may use cross-program recovery to collect a title XVI overpayment you owe when benefits are payable to you under title II, title VIII, or both.

(1) We will not apply cross-program recovery against your title II or title VIII benefits while you are refunding your

title XVI overpayment by regular monthly installments.

(2) We will not apply cross-program recovery against your title II benefits while we are recovering a title II overpayment by adjusting your title II benefits under § 404.502 of this chapter.

(3) We will not apply cross-program recovery against your title VIII benefits while we are recovering a title VIII overpayment by adjusting your title VIII benefits under §§ 408.922 through 408.923 of this chapter.

§ 416.573 How much will we withhold from your title II and title VIII benefits to recover a title XVI overpayment?

(a) If past-due benefits are payable to you, we will withhold the lesser of the entire overpayment balance or the entire amount of past-due benefits.

(b)(1) We will collect the overpayment from current monthly benefits due in a month by withholding the lesser of the amount of the entire overpayment balance or 10 percent of the monthly title II benefits and monthly title VIII benefits payable to you in the month.

(2) If we are already recovering a title II, title VIII or title XVI overpayment from your monthly title II benefit, we will figure your monthly withholding from title XVI (as described in § 416.571) without including your title II income in your total countable income.

(3) Paragraph (b)(1) of this section does not apply if:

(i) You request and we approve a different rate of withholding, or

(ii) You or your spouse willfully misrepresented or concealed material information in connection with the overpayment.

(c) In determining whether to grant your request that we withhold less than the amount described in paragraph (b)(1) of this section, we will use the criteria applied under § 416.571 to similar requests about withholding from title XVI benefits.

(d) If you or your spouse willfully misrepresented or concealed material information in connection with the overpayment, we will collect the overpayment by withholding the lesser of the overpayment balance or the entire amount of title II benefits and title VIII benefits payable to you. We will not collect at a lesser rate. (*See* § 416.571 for what we mean by concealment of material information.)

§ 416.574 Will you receive notice of our intention to apply cross-program recovery?

Before we collect an overpayment from you using cross-program recovery, we will send you a written notice that tells you the following information:

(a) We have determined that you owe a specific overpayment balance that can be collected by cross-program recovery;

(b) We will withhold a specific amount from the title II or title VIII benefits (see § 416.573);

(c) You may ask us to review this determination that you still owe this overpayment balance;

(d) You may request that we withhold a different amount from your current monthly benefits (the notice will not include this information if § 416.573(d) applies); and

(e) You may ask us to waive collection of this overpayment balance.

§ 416.575 When will we begin cross-program recovery from your current monthly benefits?

(a) We will begin collecting the overpayment balance by cross-program recovery from your current monthly title II and title VIII benefits no sooner than 30 calendar days after the date of the notice described in § 416.574. If within that 30-day period you pay us the full overpayment balance stated in the notice, we will not begin cross-program recovery.

(b) If within that 30-day period you ask us to review our determination that you still owe us this overpayment balance, we will not begin cross-program recovery from your current monthly benefits before we review the matter and notify you of our decision in writing.

(c) If within that 30-day period you ask us to withhold a different amount from your current monthly benefits than the amount stated in the notice, we will not begin cross-program recovery until we determine the amount we will withhold. This paragraph does not apply when § 416.573(d) applies.

(d) If within that 30-day period you ask us to waive recovery of the overpayment balance, we will not begin cross-program recovery from your current monthly benefits before we review the matter and notify you of our decision in writing. *See* §§ 416.550 through 416.556.

[FR Doc. 04–19321 Filed 8–23–04; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 26

[REG–145987–03]

RIN 1545–BC50

Qualified Severance of a Trust for Generation-Skipping Transfer (GST) Tax Purposes

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: These proposed regulations provide guidance regarding the qualified severance of a trust for generation-skipping transfer (GST) tax purposes under section 2642(a)(3) of the Internal Revenue Code, which was added to the Code by the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA). The regulations will affect trusts that are subject to the GST tax.

DATES: Written or electronic comments and requests for a public hearing must be received by November 22, 2004.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–145987–03), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–145987–03), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically, via the IRS Internet site at *http://www.irs.gov/regs* or via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS–REG–145987–03).

FOR FURTHER INFORMATION CONTACT: Mayer R. Samuels, (202) 622–3090 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP; Washington, DC

20224. Comments on the collection of information should be received by October 25, 2004. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in this proposed regulation is in § 26.2642–6(b). This collection of information is required by the IRS to identify whether a trust is exempt from the GST. This information will be used to determine whether the amount of tax has been calculated correctly. The collection of information is required in order to have a qualified severance. The respondents are trustees of trusts that are being severed.

Estimated total annual reporting burden: 12,500 hours.

Estimated average annual burden hours per respondent: 30 minutes.

Estimated number of respondents: 25,000.

Estimated annual frequency of responses: on occasion.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

Section 2642(a)(3) was added to the Internal Revenue Code by EGTRRA, Public Law 107–16 (115 Stat. 38 (2001)). Under section 2642(a)(3), if a trust is divided into two or more trusts in a qualified severance, the resulting trusts will be recognized as separate trusts for GST tax purposes. In many cases, a qualified severance of a trust will facilitate the most efficient and effective use of the transferor's GST tax exemption. The GST tax exemption is the lifetime exemption applicable in determining the inclusion ratio with respect to the trust, which in turn determines the amount of GST tax imposed on any generation-skipping transfer made from the trust.

Section 2642(a)(3) expands the options for trustees wishing to sever trusts by providing more time to make the severance, providing that severances may occur for more trusts, and providing a uniform system for severance. Section 2642(a)(3) was intended to supercede and replace § 26.2654–1(b) of the Generation-Skipping Transfer Tax Regulations, which authorizes the recognition of severed trusts for GST tax purposes in limited situations involving testamentary trusts or inter vivos trusts that are included in the transferor's gross estate for estate tax purposes. That regulation does not apply to irrevocable inter vivos trusts that are not includible in the decedent's gross estate. Further, under that regulation, a severance is recognized only if commenced within a prescribed time period, and only if specifically authorized under the terms of the governing instrument or local law.

Section 2642(a)(3)(B)(i) provides a general rule that a qualified severance is defined as the division of a single trust and the creation of two or more trusts if: (1) The single trust is divided on a fractional basis; and (2) the terms of the new trusts, in the aggregate, provide for the same succession of interests of beneficiaries as are provided in the original trust. Under section 2642(a)(3)(B)(ii), if a trust has an inclusion ratio that is greater than zero and less than one, the trust must be severed in a specified manner that produces one trust that is wholly exempt from GST tax, and one trust that is wholly subject to GST tax. Each of the two new trusts created may be further divided into two or more trusts under section 2642(a)(3)(B)(i). Under section 2642(a)(3)(C), a trustee may elect to sever a trust in a qualified severance at any time, and the manner in which the qualified severance is to be reported is to be specified by regulation. Section 2642(a)(3) is applicable for severances of trusts occurring after December 31, 2000.

Explanation of Provisions

I. Division on a Fractional Basis

Under section 2642(a)(3), in order to constitute a qualified severance, the single trust must be divided on a fractional basis. Under the proposed regulations, each new trust must receive assets with a value equal to a fraction or percentage of the total value of the trust assets. Thus, for example, the severance of a single trust on the basis that one trust is to be funded with 30% of the trust assets and that the other trust is to be funded with the remaining 70% of the trust assets would satisfy this requirement. Similarly, a severance stated in terms of a fraction of the trust assets such that one trust is to receive, for example, that fraction of the trust assets the numerator of which is $1,500,000 and the denominator of which is the fair market value of the trust assets on a specified date and the second trust is to receive the remaining fraction, would also satisfy this requirement. However, the severance of a trust based on a pecuniary amount (for example, severance of a single trust on the basis that one trust is to be funded with $1,500,000, and the other trust is to be funded with the balance of the trust corpus) would not satisfy this requirement.

The proposed regulations provide that each separate trust need not be funded with a pro rata portion of each asset held by the original trust. Rather, the separate trusts may be funded on a non pro rata basis (that is, where each resulting trust does not receive a pro-rata portion of each asset) provided that funding is based on the total fair market value of the assets on the date of funding. This avoids the necessity of dividing each and every asset on a fractional basis to fund the severed trusts.

II. New Trusts Must Provide for the Same Succession of Interests

Under section 2642(a)(3)(B)(i)(II), the new trusts created as a result of the qualified severance must provide in the aggregate for the same succession of interests of beneficiaries as provided in the original trust. Under the regulations, the beneficiaries of each separate trust resulting from the severance need not be identical to those of the original trust. In the case of trusts that grant the trustee the discretionary power to make non pro rata distributions to beneficiaries, the separate trusts will be considered to have the same succession of interests of beneficiaries if the terms of the separate trusts are the same as the terms of the original trust, the severance does not shift a beneficial interest in the trust to any beneficiary in a lower generation (as determined under section 2651) than the person or persons who held the beneficial interest in the original trust, and the severance does not extend the time for vesting of any beneficial

interest in the trust beyond the period provided for in the original trust. This rule for discretionary trusts is intended to facilitate the severance of trusts along family lines.

In this regard, the Treasury Department and the IRS recognize that in many cases involving discretionary trusts, when the members of two or more families are beneficiaries, the parties may desire to divide the trust along family lines so that one trust is established exclusively for the benefit of one family and one trust is established exclusively for the benefit of another family. If the inclusion ratio of the trust is between zero and one, section 2642(a)(3)(B)(ii) would ordinarily, as a practical matter, preclude the division of the trust along family lines because the section requires that the severance result in one trust with an inclusion ratio of zero and one trust with an inclusion ratio of one. However, under the proposed regulations, a similar result may be accomplished through a series of severances; that is, first a division of the trust based on the inclusion ratio, and then a division of each resulting trust along family lines.

Finally, § 26.2601–1(b)(4) of the regulations contains rules for determining when certain actions with respect to a non-chapter 13 trust (a trust that was irrevocable on or before September 25, 1985) will not cause the trust to lose its exempt status. In particular, under § 26.2601–1(b)(4)(i)(D)(1), a modification (including a severance) of a non-chapter 13 trust will not cause the trust to be subject to the provisions of chapter 13 if the modification does not (1) shift a beneficial interest in the trust to any beneficiary who occupies a lower generation than the person or persons who held the beneficial interest prior to the modification or (2) extend the time for vesting of any beneficial interest in the trust beyond the period provided for in the original trust.

Under the proposed regulations, the rules in § 26.2601–1(b)(4) will continue to apply to severances (and other actions) with respect to trusts created on or before September 25, 1985. However, the post-2000 severance of a trust created after September 25, 1985, will be governed by section 2642(a)(3) and the applicable regulations.

III. Reporting Requirements

The proposed regulations provide that a qualified severance is to be reported by filing a Form 706–GS(T), "Generation-Skipping Transfer Tax Return for Terminations," or such other form that may be published by the IRS in the future that is specifically designated to be utilized to report qualified severances. When Form 706–GS(T) is utilized, the filer should write "Qualified Severance" in red at the top of the return and attach a Notice of Qualified Severance to the return that clearly identifies the trust that is being severed and the new trusts created as a result of the severance. The notice must also provide the inclusion ratio of the trust that was severed and the inclusion ratios of the new trusts resulting from the severance. The return and attached notice must be filed even if the severance does not result in a taxable termination. A transition rule applies in the case of severances occurring before the date of publication of the final regulations.

IV. Income Tax Consequences of Severance Under the Proposed Regulations

The proposed regulations provide that a qualified severance will not constitute an exchange of property for other property differing materially either in kind or in extent, for purposes of section 1001, provided that: (1) An applicable state statute or the governing instrument authorizes the trustee to sever the trust; and (2) if the separate trusts created by the severance are funded on a non pro rata basis, as discussed in Section I above, an applicable state statute or the governing instrument authorizes the trustee to fund the separate trusts on a non pro rata basis. If section 1001 does not apply in accordance with this standard, then under section 1015, the basis of the trust assets will be the same after the severance as the basis of those assets before the severance, and under section 1223, the holding periods of the assets distributed to the new trusts will include the holding period of the assets in the original trust.

V. Proposed Effective Date

Section 2642(a)(3) supercedes the regulatory rules contained in § 26.2654–1(b). Accordingly, under the proposed regulations, the applicability of § 26.2654–1(b) is limited to severances occurring on or before December 31, 2000. The regulations under section 2642(a)(3), as proposed, apply to severances occurring on or after the date of publication of the Treasury decision adopting these rules as final regulations. In the case of severances occurring after December 31, 2000, and before publication of final regulations, taxpayers may rely on any reasonable interpretation of section 2642(a)(3) as long as reasonable notice concerning the severance and identification of the trusts involved has been given to the IRS.

The regulations under section 1001, as proposed, apply to severances occurring on or after the date of publication of the Treasury decision adopting these rules as final regulations. However, taxpayers may apply the proposed regulations under section 1001 to severances occurring after August 24, 2004, and before publication of final regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that the collection of information imposed by this regulation is not significant as reflected in the estimated burden of information collection for, which is 0.5 hours per respondent, and that few trustees are likely to be small entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the substance of the proposed regulations, as well as on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Mayer R.

Samuels, Office of the Associate Chief Counsel (Passthroughs and Special Industries), IRS. If you have any questions concerning these proposed regulations, please contact Mayer R. Samuels at (202) 622–3090. Other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 26

Estate taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 26 are proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. In § 1.1001–1, paragraph (h) is added to read as follows:

§ 1.1001–1 Computation of gain or loss.

* * * * *

(h) *Qualified severances of trusts*—(1) *In general.* A severance of a trust that meets the requirements of § 26.2642–6 is not an exchange of property for other property differing materially either in kind or in extent if—

(i) An applicable state statute or the governing instrument authorizes the trustee to sever the trust; and

(ii) If the separate trusts created by the severance are funded on a non pro rata basis as provided in § 26.2642–6(b)(3), an applicable state statute or the governing instrument authorizes the trustee to fund the separate trusts on a non pro rata basis.

(2) *Effective date.* This paragraph (h) applies to severances occurring on or after the date these regulations are published as final regulations in the **Federal Register**. Taxpayers may apply this paragraph (h) to severances occurring on or after August 24, 2004, and before the date these regulations are published as final regulations in the **Federal Register**.

PART 26—GENERATION-SKIPPING TRANSFER TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1986

Par. 3. The authority citation for part 26 is amended by adding an entry in numerical order to read, in part, as follows:

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

Section 26.2642–6 also issued under 26 U.S.C. 2642. * * *

Par. 4. In § 26.2600–1, the table is amended as follows.

1. An entry for § 26.2642–6 is added.
2. The entry for § 26.2654–1(b) introductory text is revised.
3. An entry for § 26.2654–1(c) is added.

The revision and additions read as follows:

§ 26.2600–1 Table of contents.

* * * * *

§ 26.2642–6 Qualified Severance

(a) In general.
(b) Requirements for a qualified severance.
(c) Time for making a qualified severance.
(d) Irrevocable trusts.
(e) Examples.
(f) Effective date.

* * * * *

§ 26.2654–1 Certain Trusts Treated as Separate Trusts

* * * * *

(b) Division of a trust included in the gross estate occurring on or before December 31, 2000.

* * * * *

(c) Qualified severance occurring after December 31, 2000.

Par. 5. Section 26.2642–6 is added to read as follows:

§ 26.2642–6 Qualified severance.

(a) *In general.* If a trust is severed into two or more trusts, the separate trusts resulting from the severance will be treated as separate trusts for generation-skipping transfer tax purposes only if the severance is a qualified severance. In general, the rules in this section are applicable only for purposes of the generation-skipping transfer tax and are not applicable in determining, for example, whether the severance may result in a gift subject to gift tax, cause the trust to be included in the gross estate of a beneficiary, or result in a realization of gain for purposes of section 1001. *See* § 1.1001–1(h) for rules relating to whether a qualified severance will constitute an exchange of property for other property differing materially either in kind or in extent.

(b) *Requirements for a qualified severance.* For purposes of this section, a qualified severance is a division of a single trust into two or more trusts that meets each of the following requirements:

(1) The single trust is severed pursuant to the terms of the governing instrument, or pursuant to applicable local law.

(2) The severance is effective under local law.

(3) The single trust is severed on a fractional basis, such that each new trust is funded with a fraction or percentage of the entire trust. For this purpose, the fraction or percentage may be determined by means of a formula (for example, that fraction of the trust the numerator of which is equal to transferor's unused GST tax exemption, and the denominator of which is the fair market value of the trust assets on the date of severance). The severance of a trust based on a pecuniary amount does not satisfy this requirement. For example, the severance of a trust would not be a qualified severance if the trust was divided into two trusts, with one trust to be funded with $1,500,000 and the other trust to be funded with the balance of the original trust assets. For purposes of this paragraph, the separate trusts resulting from the severance may be funded with the appropriate fraction, percentage, or pro rata portion of each asset held by the undivided trust, or on a non pro rata basis. However, if funded on a non pro rata basis, each resulting trust must be funded by applying the appropriate fraction or percentage to the total fair market value of the trust assets as of the date of funding.

(4) The terms of the new trusts must provide, in the aggregate, for the same succession of interests of beneficiaries as are provided in the original trust. This requirement will be satisfied if the beneficiaries of the separate trusts and the interests of the beneficiaries with respect to the separate trusts, when the separate trusts are viewed collectively, are identical to the beneficiaries and their respective beneficial interests with respect to the original trust before severance. With respect to trusts from which discretionary distributions may be made to any one or more beneficiaries on a non pro rata basis, this requirement will be satisfied if the terms of each of the separate trusts are the same as the terms of the original trust (even though each permissible distributee of the original trust might be a beneficiary of only one of the separate trusts), the severance does not shift a beneficial interest in the trust to any beneficiary in a lower generation (as determined under section 2651) than the person or persons who held the beneficial interest in the original trust, and the severance does not extend the time for vesting of any beneficial interest in the trust beyond the period provided for in the original trust.

(5) In the case of a severance after GST tax exemption has been allocated to the trust as a result of an allocation, deemed allocation, or automatic

allocation pursuant to the rules contained in section 2632, if the trust has an inclusion ratio as defined in § 26.2642–1 that is greater than zero and less than one, then the trust may be severed initially only into two trusts. One separate trust must receive that fractional share of the total value of all trust assets as of the date of funding equal to the applicable fraction, as defined in § 26.2642–1(b) and (c), with respect to the single trust immediately before the severance. The other separate trust must receive the balance of the trust assets. The trust receiving the fractional share equal to the applicable fraction shall have an inclusion ratio of zero, and the other trust shall have an inclusion ratio of one. If the applicable fraction with respect to the original trust is .50, then with respect to the two equal trusts resulting from the severance, the Trustee may designate which of the resulting trusts will have an inclusion ratio of zero and which will have an inclusion ratio of one. Each separate trust resulting from the severance may be further divided in accordance with the rules of this section.

(6) The severance is reported by filing Form 706–GS(T), "Generation-Skipping Transfer Tax Return for Terminations," or such other form that may be published by the IRS that is specifically designated to be utilized to report qualified severances. When Form 706–GS(T) is utilized, the filer should write "Qualified Severance" in red at the top of the return and attach a Notice of Qualified Severance to the return. The Notice must contain: a statement identifying the trust that is severed, the name of the transferor of the trust, the date of creation, the tax identification number, and the inclusion ratio with respect to the trust before severance; and a statement identifying each of the new trusts created as a result of the severance, the name and tax identification number of each new trust, the fraction of trust assets received by each new trust, other details explaining the basis for funding each new trust (a fraction of the total fair market value of the assets on the date of funding or a fraction of each asset), and the inclusion ratio of each new trust. The return and attached Notice must be filed by April 15th of the year immediately following the year during which the severance occurred or the last day of the period covered by an extension of time, if an extension of time is granted.

(c) *Time for making a qualified severance.* A trust may be severed in a qualified severance at any time prior to the termination of the trust. Thus, provided that the separate trusts resulting from the severance continue in existence after the severance, a trust may be severed in a qualified severance either before or after: GST tax exemption has been allocated to the trust; a taxable event has occurred with respect to the trust; or an addition has been made to the trust. A qualified severance is effective at the time the trust is divided into two or more separate trusts. Thus, a qualified severance has no effect on a taxable termination as defined in section 2612(a) or a taxable distribution as defined in section 2612(b) that occurred prior to the effective date of the qualified severance.

(d) *Irrevocable trusts.* See § 26.2601–1(b)(4) for rules regarding severances and other actions with respect to trusts that were irrevocable on September 25, 1985.

(e) *Examples.* The rules of this section are illustrated by the following examples:

Example 1. Formula severance. T's will establishes a testamentary marital trust (Trust) that qualifies as qualified terminable interest property (QTIP) under section 2056(b)(7). Trust provides that all trust income is to be paid to T's spouse for life. On the spouse's death, the trust corpus is to be held in further trust for the benefit of T's then-living descendants. On T's date of death in January of 2004, T's unused GST tax exemption is $1,200,000, $200,000 of which T's executor will allocate to bequests to T's grandchildren. Prior to the due date for filing the Form 706, "United States Estate (and Generation-Skipping Transfer) Tax Return," for T's estate, and thus, prior to the allocation of any GST tax exemption with respect to Trust, T's executor, pursuant to applicable state law, divides Trust into two separate trusts, Trust 1 and Trust 2. Trust 1 is to be funded with that fraction of the Trust assets, the numerator of which is $1,000,000, and the denominator of which is the value of the Trust assets as finally determined for federal estate tax purposes. Trust 2 is to be funded with the balance of the Trust assets. On the Form 706 filed for the estate, T's executor makes a QTIP election under section 2056(b)(7) with respect to Trust 1 and Trust 2 and a *reverse* QTIP election under section 2652(a)(3) with respect to Trust 1. Further, T's executor allocates T's available GST tax exemption to Trust 1. If the requirements of section 2642(a)(3) are otherwise satisfied, the severance constitutes a qualified severance. Accordingly, Trust 1 and Trust 2 are treated as separate trusts, and the GST tax elections and GST tax exemption allocation are recognized and effective for generation-skipping transfer tax purposes.

Example 2. Severance of single trust with one income beneficiary. T's will establishes a testamentary trust providing that income is to be paid to T's sister, S, for her life. On S's death, one-half of the corpus is to be paid to T's child, C, or to C's estate if C fails to survive S and one-half of the corpus is to be paid to T's grandchild, GC, or to GC's estate if GC fails to survive S. Prior to the due date for filing the Form 706, T's executor, pursuant to applicable state law, divides the testamentary trust into two separate trusts, Trust 1 and Trust 2, with each trust receiving 50 percent of the current value of the assets of the original trust. Trust 1 provides that trust income is to be paid to S for life with remainder to C or C's estate, and Trust 2 provides that trust income is to be paid to S for life with remainder to GC or GC's estate. Because Trust 1 and Trust 2 provide for the same succession of interests in the aggregate as provided in the original trust, the severance will constitute a qualified severance if the requirements of section 2642(a)(3) are otherwise satisfied. On the Form 706, T's executor may allocate T's available GST tax exemption to Trust 2.

Example 3. Severance of discretionary trust. T's will establishes a testamentary trust (Trust) providing that income is to be paid from time to time in such amounts as the trustee deems advisable to T's children, A and B, and to their respective descendants. In addition, the trustee may distribute corpus to any trust beneficiary in such amounts as the trustee deems advisable. On the death of the last to die of A and B, the trust is to terminate and the corpus is to be distributed in two equal shares, one share to the descendants of each child, per stirpes. Prior to the due date for filing the Form 706, T's executor, pursuant to applicable state law, divides Trust into two separate trusts, Trust 1 and Trust 2. Trust 1 provides that income is to be paid in such amounts as the trustee deems advisable to A and A's descendants. In addition, the trustee may distribute corpus to any trust beneficiary in such amounts as the trustee deems advisable. On the death of A, Trust 1 is to terminate and the corpus is to be distributed to the descendants of A, per stirpes, but if A dies with no living descendants, the principal will be added to Trust 2. Trust 2 contains identical provisions, except that B and B's descendants are the trust beneficiaries and, if B dies with no living descendants, the principal will be added to Trust 1. Because Trust 1 and Trust 2 provide for the same beneficiaries and the same succession of interests in the aggregate as provided in Trust, and because the severance does not shift any beneficial interest in the trust to a beneficiary who occupies a lower generation than the person or persons who held the beneficial interest in Trust, the severance constitutes a qualified severance if the requirements of section 2642(a)(3) are otherwise satisfied.

Example 4. Severance of single trust with two income beneficiaries. T's will establishes a testamentary trust (Trust) providing that Trust income is to be paid to T's children, A and B, for their joint lives. Upon the death of the first to die of A and B, the income will be paid to the survivor. At the death of the survivor of A and B, the corpus is to be distributed equally to T's grandchildren, W and X (with any then-deceased grandchild's share being paid to that grandchild's estate). W is A's child and X is B's child. Prior to the due date for filing Form 706, T's executor divides the testamentary trust equally into two separate trusts, Trust 1 and Trust 2. Trust 1 provides that trust income is to be paid to A for life and, on A's death, the remainder

is to pass to W. Trust 2 provides that trust income is to be paid to B for life and the remainder on B's death to X. Because Trust 1 and Trust 2 do not provide A and B with contingent survivor income interests as provided under the terms of the original trust, Trust 1 and Trust 2 do not provide for the same succession of interests in the aggregate as provided in Trust. Therefore, the division is not a qualified severance, and Trust 1 and Trust 2 are treated as one trust. If, however, in this example, Trust 1 instead provides that trust income is to be paid to A for life and then to B (if B survives A), with remainder to W, and if Trust 2 instead provides that trust income is to be paid to B for life and then to A (if A survives B), with remainder to X, then Trust 1 and Trust 2 would provide for the same succession of interests in the aggregate as provided in Trust, and the severance would constitute a qualified severance.

Example 5. Severance of a trust with a 50% inclusion ratio. On September 1, 2004, T transfers $100,000 to a trust for the benefit of T's grandchild, GC. On a timely filed Form 709, "United States Gift (and Generation-Skipping Transfer) Tax Return," reporting the transfer, T allocates all of T's remaining GST tax exemption ($50,000) to the trust. As a result of the allocation, the applicable fraction with respect to the trust is .50 [$50,000 (the amount of GST tax exemption allocated to the trust) divided by $100,000 (the value of the property transferred to the trust)]. The inclusion ratio with respect to the trust is .50[1–.50]. In 2006, pursuant to authority granted under applicable state law, the trustee severs the trust into two trusts, Trust 1 and Trust 2, each of which receives a 50 percent fractional share of the total value of all trust assets at that time. Because the applicable fraction with respect to the original trust is .50 and the trust was severed into two equal trusts, the trustee may designate which trust has an inclusion ratio of one, and which trust has an inclusion ratio of zero. Accordingly, in the Notice of Qualified Severance reporting the severance, the trustee designates Trust 1 as having an inclusion ratio of zero, and Trust 2 as having an inclusion ratio of one.

Example 6. Funding of severed trusts on a non pro rata basis. T's will establishes a testamentary trust (Trust) for the benefit of T's descendants, to be funded with T's stock in Corporation A and Corporation B. T dies on May 1, 2004, at which time the Corporation A stock included in T's gross estate has a fair market value of $100,000 and the stock of Corporation B included in T's gross estate has a fair market value of $200,000. On a timely filed Form 706, T's executor allocates all of T's remaining GST tax exemption ($270,000) to Trust. As a result of the allocation, the applicable fraction with respect to Trust is .90 [$270,000 (the amount of GST tax exemption allocated to the trust) divided by $300,000 (the value of the property transferred to the trust)]. The inclusion ratio with respect to Trust is .10 [1–.90]. On August 1, 2008, when the value of the Trust assets totals $500,000, consisting of Corporation A stock worth $450,000 and Corporation B stock worth $50,000, the trustee severs Trust into two identical trusts, Trust 1 and Trust 2. The terms of the instrument severing Trust provides that Trust 1 is to be funded on a non pro rata basis with assets having a fair market value on the date of funding equal to 90% of the value of the Trust assets on that date, and Trust 2 is to be funded with assets having a fair market value on the date of funding equal to 10% of the value of the Trust assets on that date. Also on August 1, 2008, the trustee funds Trust 1 with all of the Corporation A stock and funds Trust 2 with all of the Corporation B stock. Accordingly, Trust 1 is funded with assets having a value equal to 90% of the value of Trust as of the date of funding, August 1, 2008, and Trust 2 is funded with assets having a value equal to 10% of the value of Trust as of the date of funding. Therefore, if the requirements of section 2642(a)(3) are otherwise satisfied, the severance constitutes a qualified severance. Trust 1 will have an inclusion ratio of zero and Trust 2 will have an inclusion ratio of one.

Example 7. Severance of a trust along family lines. T dies on October 1, 2004. T's will establishes a testamentary trust (Trust) to be funded with $1,000,000. Trust income is to be paid to T's child, S, for S's life. On S's death, Trust is to terminate and the assets are to be divided equally among T's three grandchildren, GC1, GC2, and GC3 (or their respective descendants, per stirpes). On a timely filed Form 706, T's executor allocates all of T's remaining GST tax exemption ($300,000) to Trust. As a result of the allocation, the applicable fraction with respect to the trust is .30 [$300,000 (the amount of GST tax exemption allocated to the trust) divided by $1,000,000 (the value of the property transferred to the trust)]. The inclusion ratio with respect to the trust is .70 [1–.30]. On June 1, 2007, the trustee determines that it is in the best interest of the beneficiaries to sever Trust to provide a separate trust for each of T's three grandchildren and their respective families. The trustee severs Trust into two identical trusts, Trust 1 and Trust 2, each trust providing that trust income is to be paid to S, for life, and on S's death, the trust is to terminate and the assets are to be divided equally among GC1, GC2, and GC3 (or their respective descendants, per stirpes). The terms of the instrument severing Trust provide that Trust 1 is to receive 30% of the Trust assets and Trust 2 is to receive 70% of the Trust assets. Further, each trust is to be funded with a pro rata portion of each asset held in Trust. The trustee then severs Trust 1 into three equal trusts, Trust GC1, Trust GC2, and Trust GC3. Each trust is named for a grandchild of T and provides that trust income is to be paid to S for life, and on S's death, the trust is to terminate and the trust proceeds distributed to the respective grandchild for whom the trust is named. If that grandchild has predeceased the termination date, the trust proceeds are to be distributed to that grandchild's then-living descendants, per stirpes, or, if none, to the other grandchildren (or their respective then-living descendants, per stirpes). Each trust is to be funded with a pro rata portion of each Trust 1 asset. The trustee also severs Trust 2 in a similar manner, into Trust GC1(2), Trust GC2(2), and Trust GC3(2). If the requirements of section 2642(a)(3) are otherwise satisfied, the severance of Trust into Trust 1 and Trust 2, the severance of Trust 1 into Trust GC1, Trust GC2, Trust GC3, and the severance of Trust 2 into Trust GC1(2), Trust GC2(2) and Trust GC3(2), constitute qualified severances. Trust GC1, Trust GC2, Trust GC3 will each have an inclusion ratio of zero and Trust GC1(2), Trust GC2(2) , and Trust GC3(2) will each have an inclusion ratio of one.

(f) *Effective date.* (1) This section applies to severances occurring on or after the date that this document is published in the **Federal Register** as final regulations.

(2) *Transition rule.* In the case of severances occurring after December 31, 2000, and before the date that this document is published in the **Federal Register** as a final regulation, taxpayers may rely on any reasonable interpretation of section 2642(a)(3) as long as reasonable notice concerning the severance and identification of the trusts involved has been given to the IRS. For this purpose, these proposed regulations are treated as a reasonable interpretation of the statute. For purposes of the notification requirement contained in § 26.2642–6(b)(6), notification will be deemed timely if mailed by April 15th of the year immediately following the year during which the severance occurred or the last day of the period covered by an extension of time, if an extension of time is granted. For severances occurring between December 31, 2000, and January 1, 2004, notification will be deemed timely if mailed by November 22, 2004.

Par. 6. Section 26.2654–1 is amended as follows:

1. The paragraph heading for (b) and the introductory text of paragraph (b)(1) are revised.

2. Paragraph (c) is added.

The revision and addition reads as follows:

§ 26.2654–1 Certain trusts treated as separate trusts.

* * * * *

(b) *Division of a trust included in the gross estate occurring on or before December 31, 2000*—(1) *In general.* If a trust that is included in the transferor's gross estate (or created under the transferor's will) is severed on or before December 31, 2000, into two or more trusts, the severance is recognized for purposes of chapter 13 if—

* * * * *

(c) *Qualified severance occurring after December 31, 2000.* For rules applicable to the severance of a trust for GST tax

purposes occurring after December 31, 2000, *see* § 26.2642–6.

Deborah M. Nolan,

Acting Deputy Commissioner for Services and Enforcement.

[FR Doc. 04–19352 Filed 8–23–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA67

Financial Crimes Enforcement Network; Amendment to the Bank Secrecy Act Regulations—Imposition of Special Measure Against Infobank as a Financial Institution of Primary Money Laundering Concern

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: FinCEN is issuing this notice of proposed rulemaking to impose a special measure against Infobank as a financial institution of primary money laundering concern, pursuant to the authority contained in 31 U.S.C. 5318A of the Bank Secrecy Act.

DATES: Written comments on the notice of proposed rulemaking must be submitted on or before September 23, 2004.

ADDRESSES: You may submit comments, identified by RIN 1506–AA67, by any of the following methods:

- *Federal e-rulemaking portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regcomments@fincen.treas.gov.* Include RIN 1506–AA67 in the subject line of the message.
- *Mail:* FinCEN, P.O. Box 39, Vienna, VA 22183. Include RIN 1506–AA67 in the body of the text.

Instructions: It is preferable for comments to be submitted by electronic mail because paper mail in the Washington, DC, area may be delayed. Please submit comments by one method only. All submissions received must include the agency name and the Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to *http://www.fincen.gov,* including any personal information provided. Comments may be inspected at FinCEN between 10 a.m. and 4 p.m., in the FinCEN reading room in Washington, DC. Persons wishing to inspect the comments submitted must request an appointment by telephoning (202) 354–6400 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Office of Regulatory Programs, FinCEN, (202) 354–6400; and Office of Chief Counsel, FinCEN, at (703) 905–3590 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Provisions

On October 26, 2001, the President signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act) Act of 2001 (the USA Patriot Act), Pub. L. 107–56. Title III of the USA Patriot Act amends the anti-money laundering provisions of the Bank Secrecy Act (BSA), codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5314, 5316–5332, to promote the prevention, detection, and prosecution of international money laundering and the financing of terrorism. Regulations implementing the BSA appear at 31 CFR part 103. The authority of the Secretary of the Treasury (Secretary) to administer the BSA and its implementing regulations has been delegated to the Director of FinCEN.

Section 311 of the USA Patriot Act (section 311) added section 5318A to the BSA, granting the Secretary the authority, upon finding that reasonable grounds exist for concluding that a foreign jurisdiction, institution, class of transactions, or type of account is of "primary money laundering concern," to require domestic financial institutions and financial agencies to take certain "special measures" against the primary money laundering concern. Section 311 identifies factors for the Secretary to consider and agencies to consult before the Secretary may conclude that a jurisdiction, institution, or transaction is of primary money laundering concern. The statute also provides similar procedures, *i.e.*, factors and consultation requirements, for selecting the imposition of specific special measures against the primary money laundering concern.

Taken as a whole, section 311 provides the Secretary with a range of options that can be adapted to target specific money laundering and terrorist financing concerns most effectively. These options give the Secretary the authority to bring additional and useful pressure on those jurisdictions and institutions that pose money laundering threats. Through the imposition of various special measures, the Secretary can gain more information about the concerned jurisdictions, institutions, transactions, and accounts; can more effectively monitor the respective jurisdictions, institutions, transactions, and accounts; and/or can protect U.S. financial institutions from involvement with jurisdictions, institutions, transactions, or accounts that pose a money laundering concern. Before making a finding that reasonable grounds exist for concluding that a foreign financial institution is of primary money laundering concern, the Secretary is required to consult with both the Secretary of State and the Attorney General.

In addition to these consultations, the Secretary, when finding that a foreign financial institution is of primary money laundering concern, is required by statute to consider "such information as the Secretary determines to be relevant, including the following potentially relevant factors":

- The extent to which such financial institution is used to facilitate or promote money laundering in or through the jurisdiction;
- The extent to which such financial institution is used for legitimate business purposes in the jurisdiction; and
- The extent to which the finding that the institution is of primary money laundering concern is sufficient to ensure, with respect to transactions involving the institution operating in the jurisdiction, that the purposes of the BSA continue to be fulfilled, and to guard against international money laundering and other financial crimes.

If the Secretary determines that a foreign financial institution is of primary money laundering concern, the Secretary must determine the appropriate special measure(s) to address the specific money laundering risks. Section 311 provides a range of special measures that can be imposed, individually, jointly, in any combination, and in any sequence.[1] The Secretary's imposition of special measures follows procedures similar to those for designations, but carries with it additional consultations to be made and factors to consider. The statute requires the Secretary to consult with appropriate Federal agencies and other

[1] Available special measures include requiring: (1) Recordkeeping and reporting of certain financial transactions; (2) collection of information relating to beneficial ownership; (3) collection of information relating to certain payable-through accounts; (4) collection of information relating to certain correspondent accounts; and (5) prohibition or conditions on the opening or maintaining of correspondent or payable-through accounts. 31 U.S.C. 5318A(b)(1)–(5). For a complete discussion of the range of possible countermeasures, *see* 68 FR 18917 (April 17, 2003) (proposing to impose special measures against Nauru).

interested parties [2] and to consider the following specific factors:

- Whether similar action has been or is being taken by other nations or multilateral groups;
- Whether the imposition of any particular special measure would create a significant competitive disadvantage, including any undue cost or burden associated with compliance, for financial institutions organized or licensed in the United States;
- The extent to which the action or the timing of the action would have a significant adverse systemic impact on the international payment, clearance, and settlement system, or on legitimate business activities involving the particular institution; and
- The effect of the action on United States national security and foreign policy.[3]

B. Infobank

In this rulemaking, FinCEN proposes to impose the fifth special measure (31 U.S.C. 5318A(b)(5)) against Infobank. The fifth special measure prohibits or conditions the opening or maintaining of correspondent or payable-through accounts. This special measure may be imposed only through the issuance of a regulation.

Infobank was established in 1994, in Minsk, Belarus, and is one of the country's ten largest banks. Infobank maintains four domestic branches. It had operated two additional branches in Russia until 2001 when they were closed by the Central Bank of Russia.[4] Infobank is a national commercial bank licensed by the National Bank of the Republic of Belarus (NBRB) to engage in foreign trade including foreign exchange transactions. As of 2003, the NBRB expanded Infobank's license to enable it to carry out banking operations in gems and precious metals. It maintains correspondent accounts with several European banks and at least one bank in New York City. Infobank is a joint-stock bank. Shareholders of Infobank include many private Belarusian companies. The government of Belarus is a principal shareholder of the bank's capital. In 2001, Infobank sold a 35 percent share of its shares to the Libyan Arab Foreign Bank (LAFB), which is fully owned by the Central Bank of Libya.

In addition to banking operations, Infobank is actively involved in a number of business ventures through a network of affiliated entities, joint ventures, and its subsidiary. These concerns include Bel-Cel, a cellular telecommunications corporation, Systems Business Management, a joint venture that specializes in project finance in the Middle East and Eastern Europe, and MAZ–MAN, a tractor manufacturing company. Infobank, however, is widely reported to be a bank specializing in financial transactions related to arms exports because of the activities of its subsidiary corporation, Belmetalnergo. Infobank and Belmetalnergo have procured and financed weapons and military equipment for several nations deemed by the United States to be State Sponsors of Terrorism. Until the collapse of the former Iraqi regime, Belmetalnergo brokered various contracts with the former Iraqi government for the provision of, among other things, military equipment and training for Iraqi armed forces in violation of relevant United Nations (U.N.) resolutions. In addition, Infobank's Chairman, Victor Shevstov, reportedly had close ties with the former Iraqi regime. Shevstov served as Chairman of the Iraqi-Belarus Friendship Society. Despite the collapse of the former Iraqi regime, Infobank continues to maintain funds in accounts established for the Central Bank of Iraq.[5] At this time, the government of Belarus has not taken steps to transfer the funds at Infobank in compliance with UNSCR 1483.

The Republic of Belarus has a weak anti-money laundering regime. Drug or nondrug related money laundering is criminalized, but not explicitly, in the anti-money laundering legislation. Additionally, the money laundering legislation is not consistent with international standards as set forth in the Financial Action Task Force's 40 Recommendations on Money Laundering. There is no time frame for the reporting of suspicious transactions to government authorities and there are no penalties for non-compliance. Further, Belarus has failed to implement effectively the anti-money laundering legislation that has been adopted. Belarus' banking system is particularly vulnerable to money laundering because it suffers from a general lack of transparency and the role of the primary regulatory authority, the NBRB, is overshadowed by the Presidential Administration, which, in practice, maintains significant influence over the central and commercial banking operations of the country. Belarus also is a major exporter of arms. It is widely reported to be involved in supplying arms, equipment services, and training to Libya, Syria, and Iraq.

II. Imposition of Special Measure Against Infobank as a Financial Institution of Primary Money Laundering Concern

A. Finding

Based upon a review and analysis of relevant information, consultations with relevant agencies and departments, and after consideration of the factors enumerated in section 311, the Secretary, through his delegate, the Director of FinCEN, has determined that Infobank is a financial institution of primary money laundering concern. Infobank is well positioned to coordinate illicit activity using its subsidiary and network of affiliated entities and to launder the proceeds of those activities directly through its banking operations. FinCEN has reason to believe that Infobank actively laundered funds for the former Iraqi regime of Saddam Hussein. In addition to this money laundering activity described in detail below, Infobank's high risk activities noted above, including the sale of military equipment and weapons to a jurisdiction that was embargoed by the United Nations and to jurisdictions deemed to be sponsors of terrorism by the United States, exacerbate the risk it presents to the U.S. financial system. A discussion of the section 311 factors relevant to this finding follows.

[2] Section 5318A(a)(4)(A) requires the Secretary to consult with the Chairman of the Board of Governors of the Federal Reserve System, any other appropriate Federal banking agency, the Secretary of State, the Securities and Exchange Commission (SEC), the Commodity Futures Trading Commission (CFTC), the National Credit Union Administration (NCUA), and, in the sole discretion of the Secretary, "such other agencies and interested parties as the Secretary may find to be appropriate." The consultation process must also include the Attorney General, if the Secretary is considering prohibiting or imposing conditions on domestic financial institutions maintaining correspondent account relationships with the designated entity.

[3] Classified information used in support of a section 311 finding and measure(s) may be submitted by Treasury to a reviewing court *ex parte* and *in camera*. *See* section 376 of the Intelligence Authorization Act for Fiscal Year 2004, Pub. L. 108–177 (amending 31 U.S.C. 5318A by adding new paragraph (f)).

[4] In addition, activity indicative of money laundering has been reported transiting the Moscow branch's correspondent accounts in the U.S., which were subsequently closed by the U.S. correspondent.

[5] UNSCR 1483 requires Member States in which there are funds or other financial assets of the previous Government of Iraq or its state bodies, corporations, or agencies, located outside Iraq, to freeze those assets and, unless they are the subject of prior judicial, administrative, or arbitral lien or judgment, to transfer them to the Development Fund of Iraq.

1. The Extent to Which Infobank Has Been Used To Facilitate or Promote Money Laundering in or Through the Jurisdiction

FinCEN has reason to believe, based upon a variety of sources, that Infobank is used to facilitate or promote money laundering. The U.S. Government has information through classified and other sources that Infobank has laundered funds for the former Iraqi regime of Saddam Hussein. Specifically, Infobank laundered funds illegally paid to the former regime in order to obtain contracts to purchase Iraqi oil in violation of comprehensive United Nations sanctions and programs. Under the United Nations' Oil-for-Food program (UN OFF),[6] substantial controls were placed on Iraq's ability to export oil and import humanitarian goods. The Iraqi State Oil Marketing Organization (SOMO) negotiated contracts with international oil companies to sell Iraqi oil. U.N. overseers approved the contracts and the funds paid under the contract were deposited by the purchasers directly into an escrow account controlled by the U.N. Contracts to supply the Iraqi people with humanitarian goods also were approved by the U.N. and paid from the escrow account. However, around 2001, to defraud the governments enforcing the sanctions regime,[7] Iraq's SOMO began demanding the payment of a surcharge from potential buyers of oil to be paid directly into Iraqi bank accounts. Public information shows that in 2001, Infobank's subsidiary, Belmetalnergo, entered into contracts to purchase Iraqi oil. Information from a variety of sources further indicates that Belmetalnergo agreed to pay the illegal surcharges and deposited those funds into Infobank accounts for the benefit of the Iraqi government. Additional information suggests that Belmetalnergo entered into contracts for the provision of humanitarian goods to Iraq; these contracts inflated the value of the goods that Belmetalnergo actually provided. The excess funds paid under the contract were placed in Infobank accounts held for the benefit of the former Iraqi government. These fraudulently obtained funds derived from the illegal surcharges and the inflated UN OFF contracts were laundered through several other foreign banks and shell corporations. Finally, proceeds from the illegal surcharges and inflated contracts either were returned to the Iraqi government, in violation of the UN OFF program conditions, or were used to purchase weapons or finance military training through Infobank and Belmetalnergo.[8]

2. The Extent to Which Infobank Is Used for Legitimate Business Purposes in the Jurisdiction

It is difficult to determine the extent to which Infobank is used for legitimate purposes. Most banking transactions within Belarus are conducted by the country's six largest banks, while Infobank ranks as the tenth largest. Infobank likely engages in some legitimate activity given its participation through its partnerships and affiliated entities in such business ventures as cellular telecommunications and project finance. Given the weak anti-money laundering regime in Belarus, however, the activities of Infobank are not subject to meaningful scrutiny or oversight, and there is little information about its legitimate activities available to the public.

In any event, Infobank's involvement in laundering funds for the former Iraqi regime and in illicit and black market arms trade significantly outweighs any legitimate use of its banking operations. As stated earlier, Infobank is well positioned both to direct and coordinate illegal activity and to launder funds through its banking operations, making it a significant money laundering risk.

3. The Extent to Which Such Action Is Sufficient To Ensure, With Respect to Transactions Involving Infobank, That the Purposes of the BSA Continue To Be Fulfilled, and To Guard Against International Money Laundering and Other Financial Crimes

As detailed above, FinCEN has reasonable grounds to believe that Infobank is being used to promote or facilitate money laundering. At the moment, there are no protective measures that specifically target Infobank. Thus, finding Infobank to be a financial institution of primary money laundering concern and prohibiting the maintenance of correspondent accounts for that institution are necessary steps to ensure that Infobank is not able to access the U.S. financial system to facilitate money laundering or to engage in any other criminal purpose.

B. Imposition of Special Measure

As a result of the finding that Infobank is a financial institution of primary money laundering concern, and based upon the additional consultations and the consideration of all relevant factors, the Secretary, through his delegate, the Director of FinCEN, has determined that reasonable grounds exist for the imposition of the special measure authorized by section 5318A(b)(5).[9] That special measure authorizes the prohibition of the opening or maintaining of correspondent accounts [10] by any domestic financial institution or agency for or on behalf of a targeted financial institution. A discussion of the additional section 311 factors relevant to imposing this particular special measure follows.

1. Whether Similar Actions Have Been or Will Be Taken by Other Nations or Multilateral Groups Against Infobank

Infobank's Russian branches have been closed by Russia's Central Bank. Other countries have not, as yet, taken an action similar to the one proposed in this rulemaking that would prohibit domestic financial institutions and agencies from opening or maintaining a correspondent account for or on behalf of Infobank. The U.S. Government hopes that other countries will take similar action based on the findings contained in this rulemaking. In the meantime, lack of similar action by other countries makes it even more imperative that the fifth special measure be imposed in order to prevent access by Infobank to the U.S. financial system.

[6] In 1995, the U.N. Security Council adopted Resolution 986, establishing the Oil-for-Food Program. The Program provided Iraq with an opportunity to sell oil to finance the purchase of medicines, health supplies, food, and other humanitarian goods, notwithstanding the U.N.-imposed sanctions then in effect with respect to Iraq. The first Iraqi oil under the Program was exported in December 1996 and the first shipments of food arrived in March 1997.

[7] The Department of the Treasury's Office of Foreign Assets Control (OFAC) implemented the U.N. sanctions program governing transactions with Iraq under regulations contained in 31 CFR 575 *et seq.* Among other things, the OFAC regulations required U.S. persons interested in engaging in contracts under the UN OFF program to obtain a license from OFAC once the contract had been approved by the U.N. overseers and prior to performance, and required that all payments be made only to the escrow account controlled by the U.N. *See* 31 CFR 575.523.

[8] United Nations Security Council Resolution (UNSCR) 661, dating back to 1990, imposed a full trade embargo barring all imports or exports to Iraq with limited exceptions for humanitarian goods. Although the United Nations has lifted most sanctions against Iraq with the passage of UNSCR 1483 following the collapse of the Hussein regime, certain prohibitions on arms and weapons transfers to Iraq are still in place.

[9] In connection with this action, FinCEN consulted with staff of the Federal functional regulators, the Department of Justice, and the State Department.

[10] For purposes of the proposed rule, a correspondent account is defined as an account established to receive deposits from, or make payments or other disbursements on behalf of, a foreign bank, or handle other financial transactions related to the foreign bank.

2. Whether the Imposition of the Fifth Special Measure Would Create a Significant Competitive Disadvantage, Including Any Undue Cost or Burden Associated With Compliance, for Financial Institutions Organized or Licensed in the United States

The fifth special measure sought to be imposed by this rulemaking would prohibit covered financial institutions from opening and maintaining correspondent accounts for, or on behalf of, Infobank. As a corollary to this measure, covered financial institutions also would be required to apply special due diligence to all of their correspondent accounts to ensure that no such account is being used indirectly to provide services to Infobank. The burden associated with these requirements is not expected to be significant, given that few U.S. banks currently maintain correspondent accounts for Infobank. In addition, all U.S. financial institutions currently apply some degree of due diligence to the transactions or accounts subject to sanctions administered by the Office of Foreign Assets Control (OFAC) of the Department of the Treasury. As explained in more detail in the section-by-section analysis below, financial institutions should be able to adapt their current screening procedures for OFAC sanctions to comply with this special measure. Thus, the special due diligence that would be required by this rulemaking is not expected to impose a significant additional burden upon U.S. financial institutions.

3. The Extent to Which the Proposed Action or Timing of the Action Will Have a Significant Adverse Systemic Impact on the International Payment, Clearance, and Settlement System, or on Legitimate Business Activities of Infobank

This rulemaking targets Infobank specifically; it does not target a class of financial transactions (such as wire transfers) or a particular jurisdiction or jurisdictions. Infobank is not a major participant in the international payment system and is not relied upon by the international banking community for clearance or settlement services. Thus, the imposition of the fifth special measure against Infobank will not have a significant adverse systemic impact on the international payment, clearance, and settlement system. As noted above, there is little information available about Infobank's legitimate business activities, but in light of the reasons for imposing this special measure, FinCEN does not believe it will impose undue burden on legitimate business activities, and notes that the presence of nine larger banks in Belarus will alleviate the burden on legitimate business activities within that jurisdiction.

4. The Effect of the Proposed Action on United States National Security and Foreign Policy

The exclusion from the U.S. financial system of banks that serve as conduits for significant money laundering activity and other financial crimes enhances national security, making it more difficult for criminals to access the substantial resources of the U.S. financial system. More generally, the imposition of the fifth special measure would complement diplomatic actions undertaken by the U.S. Government to curb Belarus' involvement in international arms trafficking.

Therefore, after conducting the required consultations and weighing the relevant factors, FinCEN has determined that reasonable grounds exist for concluding that Infobank is a financial institution of primary money laundering concern and for imposing the special measure authorized by 31 U.S.C. 5318A(b)(5).

III. Section-by-Section Analysis

The proposed rule would prohibit covered financial institutions from establishing, maintaining, administering, or managing in the United States any correspondent account for, or on behalf of, Infobank. Infobank is defined specifically in the proposed notice to include Belmetalnergo. Although Belmetalnergo is not a banking institution, its activities are controlled and directed by Infobank, and it has been a substantial participant in the money laundering activity transiting Infobank. Therefore, FinCEN is defining Infobank to include Belmetalnergo under the proposed notice to ensure that Infobank cannot indirectly access the U.S. financial system through Belmetalnergo. As a corollary to this prohibition, covered financial institutions would be required to apply special due diligence to their correspondent accounts to guard against their indirect use by Infobank. At a minimum, that special due diligence must include two elements. First, a covered financial institution must notify its correspondent account holders that they may not provide Infobank with access to the correspondent account maintained at the covered financial institution. Second, a covered financial institution must take reasonable steps to identify any indirect use of its correspondent accounts by Infobank, to the extent that such indirect use can be determined from transactional records maintained by the covered financial institution in the normal course of business. A covered financial institution should take a risk-based approach when deciding what, if any, additional due diligence measures it should adopt to guard against the indirect use of its correspondent accounts by Infobank, based on risk factors such as the type of services it offers and geographic locations of its correspondents.

A. 103.190(a)—Definitions

1. Correspondent Account

Section 103.190(a)(1) defines the term "correspondent account" by reference to the definition contained in 31 CFR 103.175(d)(1)(ii). Section 103.175(d)(1)(ii) defines a correspondent account to mean an account established to receive deposits from, or make payments or other disbursements on behalf of, a foreign bank, or handle other financial transactions related to the foreign bank.

In the case of a U.S. depository institution, this broad definition would include most types of banking relationships between a U.S. depository institution and a foreign bank, including payable-through accounts.

In the case of securities broker-dealers, futures commission merchants, introducing brokers, and investment companies that are open-end companies (mutual funds), a correspondent account would include any account that permits the foreign bank to engage in (1) trading in securities and commodity futures or options, (2) funds transfers, or (3) other types of financial transactions.

FinCEN is using the same definition for purposes of the proposed rule as that established in the final rule implementing sections 313 and 319(b) of the USA Patriot Act[11] except that the term is being expanded to cover such accounts maintained by futures commission merchants, introducing brokers, and mutual funds.

2. Covered Financial Institution

Section 103.190(a)(2) of the proposed rule defines covered financial institution to mean all of the following: any insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)); a commercial bank or trust company; a private banker; an agency or branch of a foreign bank in the United States; a credit union; a thrift institution; a corporation acting under section 25A of the Federal Reserve Act (12 U.S.C. 611 *et seq.*); a broker or dealer registered or required to register with the SEC under the

[11] *See* 67 FR 60562 (September 26, 2002), codified at 31 CFR 103.175(d)(1).

Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*); a futures commission merchant or an introducing broker registered, or required to register, with the CFTC under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*); and an investment company (as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a-3)) that is an open-end company (as defined in section 5 of the Investment Company Act of 1940 (15 U.S.C. 80a–5)) that is registered, or required to register, with the SEC under Section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8).

3. Infobank

Section 103.190(a)(3) of the proposed rule defines Infobank to include all headquarters, branches, and offices of Infobank operating in Belarus or in any jurisdiction. All subsidiaries of Infobank, including Belmetalnergo, are included in the definition, although FinCEN understands that Infobank currently only has one subsidiary, Belmetalnergo. FinCEN will provide updated information as it is available; however, covered financial institutions should take commercially reasonable measures to determine whether a customer is a subsidiary of Infobank.

B. 103.190(b)—Requirements for Covered Financial Institutions

1. Prohibition on Direct Use of Correspondent Accounts

Section 103.190(b)(1) of the proposed rule prohibits all covered financial institutions from establishing, maintaining, administering, or managing a correspondent or payable-through account in the United States for, or on behalf of, Infobank. The prohibition would require all covered financial institutions to review their account records to ensure that they maintain no accounts directly for, or on behalf of, Infobank.

2. Special Due Diligence of Correspondent Accounts To Prohibit Indirect Use

As a corollary to the prohibition on maintaining correspondent accounts directly for Infobank, section 103.190(b)(2) requires a covered financial institution to apply special due diligence to its correspondent accounts [12] that is reasonably designed to guard against their indirect use by Infobank. At a minimum, that special due diligence must include notifying correspondent account holders that they may not provide Infobank with access to the correspondent account maintained at the covered financial institution. For example, a covered financial institution may satisfy this requirement by transmitting the following notice to all of its correspondent account holders:

Notice: Pursuant to U.S. regulations issued under section 311 of the USA PATRIOT Act, 31 CFR 103.190, we are prohibited from establishing, maintaining, administering or managing a correspondent account for, or on behalf of, Infobank or any of its subsidiaries (including Belmetalnergo). The regulations also require us to notify you that you may not provide Infobank or any of its subsidiaries with access to the correspondent account you hold at our financial institution. If we become aware that Infobank or any of its subsidiaries is indirectly using the correspondent account you hold at our financial institution, we will be required to take appropriate steps to block such access, including by terminating your account.

The purpose of the notice requirement is to help ensure cooperation from correspondent account holders in denying Infobank access to the U.S. financial system, as well as to increase awareness within the international financial community of the risks and deficiencies of Infobank. However, FinCEN does not require or expect a covered financial institution to obtain a certification from its correspondent account holders that indirect access will not be provided in order to comply with this notice requirement. Instead, methods of compliance with the notice requirement could include, for example, transmitting a one-time notice by mail, fax, or e-mail to a covered financial institution's correspondent account customers, informing them that they may not provide Infobank with access to the covered financial institution's correspondent account, or including such information in the next regularly occurring transmittal from the covered financial institution to its correspondent account holders. FinCEN specifically solicits comments on the appropriate form and scope of the notice that would be required under the rule.

A covered financial institution also would be required under this rulemaking to take reasonable steps to identify any indirect use of its correspondent accounts by Infobank, to the extent that such indirect use can be determined from transactional records maintained by the covered financial institution in the normal course of business. For example, a covered financial institution would be expected to apply an appropriate screening mechanism to be able to identify a funds transfer order that on its face listed Infobank as the originator's or beneficiary's financial institution, or otherwise referenced Infobank. An appropriate screening mechanism could be the mechanism used by a covered financial institution to comply with sanctions programs administered by OFAC. FinCEN specifically solicits comments on the requirement under the proposed rule that a covered financial institution take reasonable steps to screen its correspondent accounts in order to identify any indirect use of such accounts by Infobank.

Notifying its correspondent account holders and taking reasonable steps to identify any indirect use of its correspondent accounts by Infobank in the manner discussed above are the minimum due diligence requirements under the proposed rule. Beyond these minimum steps, a covered financial institution should adopt a risk-based approach for determining what, if any, additional due diligence measures it should implement to guard against the indirect use of its correspondents accounts by Infobank, based on risk factors such as the type of services it offers and the geographic locations of its correspondent account holders.

A covered financial institution that obtains knowledge that a correspondent account is being used by a foreign bank to provide indirect access to Infobank must take all appropriate steps to block such indirect access, including, where necessary, terminating the correspondent account. A covered financial institution may afford the foreign bank a reasonable opportunity to take corrective action prior to terminating the correspondent account. Should the foreign bank refuse to comply, or if the covered financial institution cannot obtain adequate assurances that the account will no longer be used for impermissible purposes, the covered financial institution must terminate the account within a commercially reasonable time. This means that the covered financial institution should not permit the foreign bank to establish any new positions or execute any transactions through the account, other than those necessary to close the account. A covered financial institution may reestablish an account closed under the proposed rule if it determines that the account will not be used to provide banking services indirectly to Infobank. FinCEN specifically solicits comment on the requirement under the proposed rule that a covered financial institution block indirect access to Infobank, once such indirect access is identified.

[12] Again, for purposes of the proposed rule, a correspondent account is defined as an account established to receive deposits from, or make payments or other disbursements on behalf of, a foreign bank, or handle other financial transactions related to the foreign bank.

3. Reporting Not Required

Section 103.190(b)(3) of the proposed rule clarifies that the rule does not impose any reporting requirement upon any covered financial institution that is not otherwise required by applicable law or regulation. A covered financial institution must, however, document its compliance with the requirement that it notify its correspondent account holders that they may not provide Infobank with access to the correspondent account maintained at the covered financial institution.

IV. Request for Comments

FinCEN invites comments on all aspects of the proposal to prohibit the opening or maintaining of correspondent accounts for or on behalf of Infobank, and specifically invites comments on the following matters:

1. The appropriate form and scope of the notice to correspondent account holders that would be required under the rule;

2. The appropriate scope of the proposed requirement for a covered financial institution to take reasonable steps to identify any indirect use of its correspondent accounts by Infobank;

3. The appropriate steps a covered financial institution should take once it identifies an indirect use of one of its correspondent accounts by Infobank; and

4. The impact of the proposed special measure upon legitimate transactions with Infobank.

V. Regulatory Flexibility Act

It is hereby certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. FinCEN understands that Infobank currently maintains only a handful of correspondent accounts in the United States, and that those accounts are maintained at very large banks. Thus, the prohibition on maintaining such accounts will not have a significant impact on a substantial number of small entities. In addition, all U.S. persons, including U.S. financial institutions, currently exercise some degree of due diligence in order to comply with U.S. sanctions programs administered by OFAC, which can easily be modified to monitor for the use of correspondent accounts by Infobank. Thus, the special due diligence that would be required by this rulemaking—*i.e.*, the one-time transmittal of notice to correspondent account holders—is not expected to impose a significant additional economic burden upon small U.S. financial institutions. FinCEN invites comments from members of the public who believe there will be a significant economic impact on small entities.

VI. Paperwork Reduction Act

The collection of information contained in this proposed rule is being submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent (preferably by fax (202) 395–6974) to Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (1506), Washington, DC 20503 (or by e-mail to *jlackeyj@omb.eop.gov*), with a copy to FinCEN by mail or e-mail at the addresses previously specified. Comments on the collection of information should be received by September 23, 2004. In accordance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), and its implementing regulations, 5 CFR 1320, the following information concerning the collection of information as required by 31 CFR 103.190 is presented to assist those persons wishing to comment on the information collection.

The collection of information in this proposed rule is in 31 CFR 103.190(b)(2)(i) and 31 CFR 103.190(b)(3)(i). The disclosure requirement in 31 CFR 103.190(b)(2)(i) is intended to ensure cooperation from correspondent account holders in denying access to the U.S. financial system, as well as to increase awareness within the international financial community of the risks and deficiencies of Infobank. The information required to be maintained by 31 CFR 103.190(b)(3)(i) will be used by Federal agencies and certain self-regulatory organizations to verify compliance by covered financial institutions with the provisions of 31 CFR 103.190. The class of financial institutions affected by the disclosure requirement is identical to the class of financial institutions affected by the recordkeeping requirement. The collection of information is mandatory.

Description of Affected Financial Institutions: Banks, broker-dealers in securities, futures commission merchants and introducing brokers, and mutual funds maintaining correspondent accounts.

Estimated Number of Affected Financial Institutions: 5,000.

Estimated Average Annual Burden Hours per Affected Financial Institution: The estimated average burden associated with the collection of information in this proposed rule is 1 hour per affected financial institution.

Estimated Total Annual Burden: 5,000 hours.

FinCEN specifically invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the mission of FinCEN, including whether the information shall have practical utility; (b) the accuracy of FinCEN's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information required to be maintained; (d) ways to minimize the burden of the required collection of information, 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 maintain the information.

VII. Executive Order 12866

This proposed rule is not a significant regulatory action for purposes of Executive Order 12866, "Regulatory Planning and Review."

List of Subjects in 31 CFR Part 103

Administrative practice and procedure, Banks and banking, Brokers, Counter-money laundering, Counter-terrorism, and Foreign banking.

Authority and Issuance

For the reasons set forth in the preamble, part 103 of title 31 of the Code of Federal Regulations is proposed to be amended as follows:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FINANCIAL TRANSACTIONS

1. The authority citation for part 103 is revised to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314, 5316–5332; title III, secs. 311, 312, 313, 314, 319, 326, 352, Pub. L. 107–56, 115 Stat. 307.

2. Subpart I of part 103 is proposed to be amended by adding new § 103.190 to read as follows:

§ 103.190 Special measures against Infobank.

(a) *Definitions.* For purposes of this section:

(1) *Infobank* means all headquarters, branches, offices, and subsidiaries of Infobank operating in Belarus or in any jurisdiction, including Belmetalnergo.

(2) *Correspondent account* has the same meaning as provided in § 103.175(d)(1)(ii).

(3) *Covered financial institution* has the same meaning as provided in § 103.175(f)(2) and also includes:

(i) A futures commission merchant or an introducing broker registered, or required to register, with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*); and

(ii) An investment company (as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–5)) that is an open-end company (as defined in section 5 of the Investment Company Act (15 U.S.C. 80a–5)) and that is registered, or required to register, with the Securities and Exchange Commission under section 8 of the Investment Company Act (15 U.S.C. 80a–8).

(4) *Subsidiary* means a company of which more than 50 percent of the voting stock or analogous equity interest is owned by another company.

(b) *Requirements for covered financial institutions—(1) Prohibition on direct use of correspondent accounts.* A covered financial institution shall terminate any correspondent account that is established, maintained, administered, or managed in the United States for, or on behalf of, Infobank.

(2) *Special due diligence of correspondent accounts to prohibit indirect use.* (i) A covered financial institution shall apply special due diligence to its correspondent accounts that is reasonably designed to guard against their indirect use by Infobank. At a minimum, that special due diligence must include:

(A) Notifying correspondent account holders that they may not provide Infobank with access to the correspondent account maintained at the covered financial institution; and

(B) Taking reasonable steps to identify any indirect use of its correspondent accounts by Infobank, to the extent that such indirect use can be determined from transactional records maintained in the covered financial institution's normal course of business.

(ii) A covered financial institution shall take a risk-based approach when deciding what, if any, additional due diligence measures it should adopt to guard against the indirect use of its correspondent accounts by Infobank.

(iii) A covered financial institution that obtains knowledge that a correspondent account is being used by the foreign bank to provide indirect access to Infobank, shall take all appropriate steps to block such indirect access, including, where necessary, terminating the correspondent account.

(3) *Recordkeeping and reporting.* (i) A covered financial institution is required to document its compliance with the notice requirement set forth in paragraph (b)(2)(i)(A) of this section.

(ii) Nothing in this section shall require a covered financial institution to report any information not otherwise required to be reported by law or regulation.

Dated: August 18, 2004.

William J. Fox,

Director, Financial Crimes Enforcement Network.

[FR Doc. 04–19266 Filed 8–23–04; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA65

Financial Crimes Enforcement Network; Amendment to the Bank Secrecy Act Regulations—Imposition of Special Measure Against First Merchant Bank OSH Ltd, Including Its Subsidiaries, FMB Finance Ltd, First Merchant International Inc, First Merchant Finance Ltd, and First Merchant Trust Ltd, as a Financial Institution of Primary Money Laundering Concern

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: FinCEN is issuing this notice of proposed rulemaking to impose a special measure against First Merchant Bank OSH Ltd as a financial institution of primary money laundering concern, pursuant to the authority contained in 31 U.S.C. 5318A of the Bank Secrecy Act.

DATES: Written comments on the notice of proposed rulemaking must be submitted on or before September 23, 2004.

ADDRESSES: You may submit comments, identified by RIN 1506–AA65, by any of the following methods:

- Federal e-rulemaking portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- E-mail: *regcomments@fincen.treas.gov*. Include RIN 1506–AA65 in the subject line of the message.
- Mail: FinCEN, P.O. Box 39, Vienna, VA 22183. Include RIN 1506–AA65 in the body of the text.

Instructions: It is preferable for comments to be submitted by electronic mail because paper mail in the Washington, DC, area may be delayed. Please submit comments by one method only. All submissions received must include the agency name and the Regulatory Information Number (RIN) for this proposed rulemaking. All comments received will be posted without change to *http://www.fincen.gov*, including any personal information provided. Comments may be inspected at FinCEN between 10 a.m. and 4 p.m., in the FinCEN reading room in Washington, DC. Persons wishing to inspect the comments submitted must request an appointment by telephoning (202) 354–6400 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Office of Regulatory Programs, FinCEN, at (202) 354–6400 or Office of Chief Counsel, FinCEN, at (703) 905–3590 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Provisions

On October 26, 2001, the President signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act) Act of 2001 (the USA Patriot Act), Pub. L. 107–56. Title III of the USA Patriot Act amends the anti-money laundering provisions of the Bank Secrecy Act (BSA), codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5314, 5316–5332, to promote the prevention, detection, and prosecution of international money laundering and the financing of terrorism. Regulations implementing the BSA appear at 31 CFR Part 103. The authority of the Secretary of the Treasury (Secretary) to administer the BSA and its implementing regulations has been delegated to the Director of FinCEN.

Section 311 of the USA Patriot Act (section 311) added section 5318A to the BSA, granting the Secretary the authority, upon finding that reasonable grounds exist for concluding that a foreign jurisdiction, institution, class of transactions, or type of account is of "primary money laundering concern," to require domestic financial institutions and financial agencies to take certain "special measures" against the primary money laundering concern. Section 311 identifies factors for the Secretary to consider and Federal agencies to consult before the Secretary may find that reasonable grounds exist for concluding that a jurisdiction, institution, or transaction is of primary money laundering concern. The statute also provides similar procedures, *i.e.*, factors and consultation requirements, for selecting the imposition of specific special measures against the primary money laundering concern.

Taken as a whole, section 311 provides the Secretary with a range of options that can be adapted to target specific money laundering and terrorist financing concerns most effectively. These options give the Secretary the authority to bring additional and useful pressure on those jurisdictions and institutions that pose money laundering threats. Through the imposition of various special measures, the Secretary can gain more information about the concerned jurisdictions, institutions, transactions, and accounts; monitor more effectively the respective jurisdictions, institutions, transactions, and accounts; and/or protect U.S. financial institutions from involvement with jurisdictions, institutions, transactions, or accounts that pose a money laundering concern. Before making a finding that reasonable grounds exist for concluding that a foreign financial institution is of primary money laundering concern, the Secretary is required to consult with both the Secretary of State and the Attorney General.

In addition to these consultations, the Secretary, when finding that a foreign financial institution is of primary money laundering concern, is required by section 311 to consider "such information as the Secretary determines to be relevant, including the following potentially relevant factors:'

- The extent to which such financial institution is used to facilitate or promote money laundering in or through the jurisdiction;
- The extent to which such financial institution is used for legitimate business purposes in the jurisdiction; and
- The extent to which such action is sufficient to ensure, with respect to transactions involving the institution operating in the jurisdiction, that the purposes of the BSA continue to be fulfilled, and to guard against international money laundering and other financial crimes.

If the Secretary determines that reasonable grounds exist for concluding that a foreign financial institution is of primary money laundering concern, the Secretary must determine the appropriate special measure(s) to address the specific money laundering risks. Section 311 provides a range of special measures that can be imposed, individually, jointly, in any combination, and in any sequence.[1] In the imposition of special measures, the Secretary follows procedures similar to those for finding a foreign financial institution to be of primary money laundering concern, but performs additional consultations and considers additional factors. Section 311 requires the Secretary to consult with other appropriate Federal agencies and parties[2] and to consider the following specific factors:

- Whether similar action has been or is being taken by other nations or multilateral groups;
- Whether the imposition of any particular special measure would create a significant competitive disadvantage, including any undue cost or burden associated with compliance, for financial institutions organized or licensed in the United States;
- The extent to which the action or the timing of the action would have a significant adverse systemic impact on the international payment, clearance, and settlement system, or on legitimate business activities involving the particular institution; and
- The effect of the action on United States national security and foreign policy.[3]

A. "Turkish Republic of Northern Cyprus"

In this proposed rulemaking, FinCEN proposes to impose the fifth special measure (31 U.S.C. 5318A(b)(5)) against First Merchant Bank OSH Ltd (First Merchant Bank or the Bank). The fifth special measure prohibits or imposes conditions upon the opening or maintaining of correspondent or payable-through accounts for the foreign financial institution of primary money laundering concern. This special measure may be imposed only through the issuance of a regulation.

Cyprus was divided in 1974 when a coup d'etat directed from Greece induced the Turkish military to intervene. Since then, the southern part of the country has been under the control of the Government of the Republic of Cyprus. The northern part is controlled by a Turkish Cypriot administration that in 1983 proclaimed itself the "Turkish Republic of Northern Cyprus" ("TRNC").[4] Turkey is the only country that recognizes the "TRNC."

The "TRNC" has a sizeable offshore sector that is not subject to effective anti-money laundering regulation. The offshore sector consists of 33 banks and approximately 54 international business companies. Under Turkish Cypriot law, the offshore banks may not conduct business with "TRNC" residents and may not deal in cash. The offshore entities are audited by the Turkish Cypriot "Central Bank" and are required to submit a yearly report on their activities. However, the "Central Bank" has no regulatory authority over the offshore banks and can neither grant nor revoke licenses. Instead, the Turkish Cypriot "Ministry of the Interior" performs this function, which leaves the process open to politicization and possible corruption. Although a recently proposed law would have restricted the granting of new bank licenses to only those banks already having licensees in an OECD country, the law never passed.

The Turkish Cypriot anti-money laundering law became effective in 1999. Although the law, on paper, is a significant improvement over the money laundering controls previously in place, the Government of the "TRNC" has received few suspicious activity reports from financial institutions and has been lax in enforcing the law.[5] The fact that the "TRNC" is recognized only by Turkey prevents "TRNC" officials from receiving training or funding from international organizations with experience in combating money laundering.

There continues to be evidence that narcotics trade with Turkey and Britain and money laundering are conducted in or through the "TRNC."[6] Criminals reportedly use casinos operating in the

[1] Available special measures include requiring: (1) Recordkeeping and reporting of certain financial transactions; (2) collection of information relating to beneficial ownership; (3) collection of information relating to certain payable-through accounts; (4) collection of information relating to certain correspondent accounts; and (5) prohibition or conditions on the opening or maintaining of correspondent or payable-through accounts. 31 U.S.C. 5318A(b)(1)–(5). For a complete discussion of the range of possible countermeasures, *see* 68 FR 18917 (April 17, 2003) (proposing to impose special measures against Nauru).

[2] Section 5318A(a)(4)(A) requires the Secretary to consult with the Chairman of the Board of Governors of the Federal Reserve System, any other appropriate Federal banking agency, the Secretary of State, the Securities and Exchange Commission (SEC), the Commodity Futures Trading Commission (CFTC), the National Credit Union Administration (NCUA), and, in the sole discretion of the Secretary, "such other agencies and interested parties as the Secretary may find to be appropriate." The consultation process must also include the Attorney General, if the Secretary is considering prohibiting or imposing conditions upon the opening or maintaining of a correspondent account by any domestic financial institution or domestic financial agency for the foreign financial institution of primary money laundering concern.

[3] Classified information used in support of a section 311 designation and measure(s) may be submitted by Treasury to a reviewing court *ex parte* and *in camera*. *See* section 376 of the Intelligence Authorization Act for Fiscal Year 2004, Pub. L. 108–177 (amending 31 U.S.C. 5318A by adding new paragraph (f)).

[4] Because the United States does not recognize the "Turkish Republic of Northern Cyprus," all references to the country or government in this proposed rulemaking are placed within quotation marks.

[5] *See* U.S. Department of State, 2003 International Narcotics Control Strategy Report, issued March 1, 2004 (INCSR).

[6] INCSR, *supra* note 11.

"TRNC" and Turkish Cypriot banks licensed to operate offshore to launder money from their illegal activities. The jurisdiction's 21 primarily Turkish-mainland owned casinos are essentially unregulated. "TRNC" officials believe that much of the currency generated by these casinos is transported directly to Turkey without entering the "TRNC" banking system.[7] And, as noted above, the licensing process and supervision of offshore banks by the Government of the "TRNC" is not rigorous. Although Turkish Cypriot law prohibits individuals entering or leaving the "TRNC" from transporting more than the equivalent of $10,000 in currency, Central Bank officials note that this law is difficult to enforce, given the large volume of travelers between Turkey and the "TRNC" and the growing number of individuals crossing the U.N.-patrolled buffer zone since travel restrictions were relaxed between north and south Cyprus in 2003.[8]

B. First Merchant Bank OSH Ltd

First Merchant Bank operates out of offices in Lefkosa/Nicosia, "TRNC," and has 21 employees. First Merchant Bank was licensed in the "TRNC" in 1993 as an offshore bank. It is a privately owned commercial bank specializing in the provision of commercial and investment banking services to individual and corporate offshore customers. On its Web site, the Bank repeatedly advertises the "private" and "discreet" nature of its services, stressing that customers receive the "highest confidentiality" from and "a close relationship" with the Bank.[9] First Merchant Bank maintains correspondent accounts with banks in countries all over the world, including several U.S. and foreign banks located in New York City.[10] According to published reports, Dr. Hakki Yaman Namli is President, Chairman, and General Manager of First Merchant Bank.[11] First Merchant Bank is owned by Standard Finance Ltd. (Ireland) and private shareholders (98% and 2%, respectively).[12] Standard Finance Ltd., in turn, is owned by Provincial & Allied Funding Corp. (Bahamas) and Millvale Holdings Inc. (British Virgin Islands). As stated on its Web site, First Merchant Bank has four wholly owned subsidiaries: FMB Finance Ltd (British Virgin Islands), First Merchant International Inc (Bahamas), First Merchant Finance Ltd (Ireland), and First Merchant Trust Ltd (Ireland). For the purposes of this document, unless the context dictates otherwise, references to First Merchant Bank include FMB Finance Ltd, First Merchant International Inc, First Merchant Finance Ltd, and First Merchant Trust Ltd, and any other branch, office, or subsidiary of First Merchant Bank operating in the "TRNC" or in any other jurisdiction.

II. Imposition of Special Measure Against First Merchant Bank, Including Its Subsidiaries, FMB Finance Ltd, First Merchant International Inc, First Merchant Finance Ltd, and First Merchant Trust Ltd, as a Financial Institution of Primary Money Laundering Concern

A. Finding

Based upon a review and analysis of relevant information, consultations with relevant Federal agencies and departments, and after consideration of the factors enumerated in section 311, the Secretary, through his delegate, the Director of FinCEN, has found that reasonable grounds exist for concluding that First Merchant Bank is a financial institution of primary money laundering concern. FinCEN has found First Merchant Bank to be of primary money laundering concern based on a number of factors, including: (1) It is licensed as an offshore bank in the "TRNC," a jurisdiction with inadequate anti-money laundering controls, particularly those applicable to its offshore sector; (2) it is involved in the marketing and sale of fraudulent financial products and services; (3) it has been used as a conduit for the laundering of fraudulently obtained funds; and (4) the individuals who own, control, and operate First Merchant Bank have links with organized crime and apparently have used First Merchant Bank to launder criminal proceeds. A discussion of the section 311 factors relevant to this finding follows.

1. The Extent to Which First Merchant Bank Has Been Used To Facilitate or Promote Money Laundering in or Through the Jurisdiction

FinCEN has determined, based on a variety of sources, that First Merchant Bank is used to facilitate or promote money laundering in or through the "TRNC." Indeed, some of the money laundering occurring at First Merchant Bank appears to involve the proceeds of First Merchant Bank's own fraudulent activity, as further described below. In addition, the proceeds of alleged illicit activity have been transferred to or through accounts held by First Merchant Bank at U.S. financial institutions.

In January 2003, a Federal grand jury sitting in the Southern District of New York indicted First Merchant Bank's President, Chairman, and General Manager, Dr. Hakki Yaman Namli, as a co-conspirator with an associate, Ralph Jarson,[13] in a scheme to market "credit enhancement" products, which consisted of deceptive bank documents showing that a customer had assets that did not exist, and to sell worthless "credit facilities" to investors.[14] Allegedly, the conspirators worked with First Merchant Bank to produce and market the deceptive bank documents and worthless credit facilities. Because Dr. Hakki Yaman Namli became a fugitive from justice he was not tried on the indictment; however, his associate, Ralph Jarson, was convicted on six felony counts, including one count of conspiring with Dr. Hakki Yaman Namli to engage in wire fraud, and five counts of committing wire fraud, on October 30, 2003.

The indictment on which Ralph Jarson was tried describes two different schemes perpetrated by Ralph Jarson, Dr. Hakki Yaman Namli, and First Merchant Bank. First, Ralph Jarson and Dr. Hakki Yaman Namli negotiated the sale of a fraudulent "special account statement" issued by First Merchant Bank to an FBI undercover agent posing as a representative of a brokerage firm for a fee of $2 million. The "special account statement" showed that the brokerage firm had $20 million in immediately available assets when, in fact, no assets existed. Second, in exchange for $1 million, First Merchant Bank issued a worthless letter of credit with a face value of $100 million to an investor for the purchase of discounted medium term bank notes that the investor later discovered were non-existent.

A review of records obtained from a number of financial institutions in the U.S. shows a pattern of fraudulent conduct similar to that described in the indictment by Dr. Hakki Yaman Namli and First Merchant Bank that began as early as 1997 and continued through at least the end of 2002. Several different U.S. banks were approached by First Merchant Bank customers attempting to use fraudulent letters of credit or fraudulent loan guarantees issued or provided by First Merchant Bank as

[7] *Id.*

[8] *Id.*

[9] *See http://www.firstmerchantbank.com.*

[10] The Bankers' Almanac, Reed Business Information Ltd (2003).

[11] *Id.*

[12] *Id.*

[13] Jarson operated through his company Concorde Wyvern Atlantic, a/k/a Wyvern Anstalt, located in London and registered in Liechtenstein.

[14] Indictment S1 02 Cr. 679 (MGC); Southern District of New York, United States of America, versus Ralph Jarson and Hakki Yaman Namli.

collateral to obtain funds from the U.S. banks.

In addition, it appears that First Merchant Bank has used its correspondent accounts with banks in the U.S. as conduits for the transfer of fraudulently obtained funds. In one case, $4 million in proceeds of a "prime bank" fraud [15] were transferred through one of First Merchant Bank's correspondent accounts in the U.S. to the perpetrator's account in the "TRNC." In another case, a former officer of a third bank wired $700,000 to the same correspondent account for the benefit of First Merchant Bank. The third bank suspected that the funds derived from the former officer's misuse of position or self-dealing while employed at the bank.

Domestic and foreign newspapers and magazines report that First Merchant Bank has been used for illicit transactions since its founding in 1993. Apparently, First Merchant Bank was established, at least in part, to facilitate the movement of funds between organized crime rings and corrupt politicians. The earliest indicators of illicit activity on the part of First Merchant Bank or its principals involved the original shareholders or partners of the Bank. One of the original partners of First Merchant Bank is reported to be a former KGB employee identified as Vladimir Kobarel, who allegedly involved First Merchant Bank in transferring underground money to Russian banks. Another original partner, Tarik Umit, was a former Turkish National Intelligence Organization (MIT) member who was believed killed in connection with a well-known Turkish investigation into links between the Turkish mafia, the MIT, and right wing politicians (the Susurluk scandal).[16] First Merchant Bank, Tarik Umit, and Dr. Hakki Yaman Namli are alleged to have been involved with the laundering of $450 million in narcotics proceeds for the "Susurluk gang."

2. The Extent to Which First Merchant Bank Is Used for Legitimate Business Purposes in the Jurisdiction

Because First Merchant Bank is located in the "TRNC," which is not recognized by the United States and has weak anti-money laundering laws, and is an offshore bank subject to limited government oversight, the extent of First Merchant Bank's legitimate activities is ultimately difficult to quantify. FinCEN has identified several instances in which First Merchant Bank and its Chairman have engaged in fraudulent activity and money laundering and in which illicit funds have passed through First Merchant Bank or one of its subsidiaries. Considering this evidence and the lack of evidence showing that the Bank is used for legitimate business purposes, FinCEN believes that First Merchant Bank is rarely, if ever, used for legitimate business transactions and any legitimate use of First Merchant Bank and its subsidiaries is significantly outweighed by their use to promote or facilitate money laundering. Nevertheless, FinCEN specifically solicits comment on the impact of the proposed special measure upon the any legitimate transactions conducted with First Merchant Bank involving, for example, United States businesses, United Nations agencies, and non-governmental and private voluntary organizations doing business in or operating in the "TRNC."

3. The Extent to Which Such Action Is Sufficient To Ensure, With Respect to Transactions Involving First Merchant Bank, That the Purposes of the BSA Continue To Be Fulfilled, and To Guard Against International Money Laundering and Other Financial Crimes

As detailed above, FinCEN has reasonable grounds to conclude that First Merchant Bank is being used to promote or facilitate money laundering, including the transmission of fraudulent bank instruments through the U.S. financial system and the international laundering of the proceeds of fraudulent activity. Currently, there are no protective measures that specifically target First Merchant Bank or otherwise serve to notify U.S. and foreign financial institutions of the money laundering risks associated with First Merchant Bank. Thus, finding First Merchant Bank to be a financial institution of primary money laundering concern and prohibiting the opening or maintaining of correspondent accounts for that institution, is a necessary step to ensure that First Merchant Bank is not able to access the U.S. financial system to facilitate money laundering or any other criminal activity. The finding of primary money laundering concern and the imposition of the special measure also bring the Bank's criminal conduct to the attention of the international financial community and hopefully further limit the Bank's ability to conduct transactions.

B. Imposition of Special Measure

As a result of the finding that First Merchant Bank is a financial institution of primary money laundering concern, and based upon additional consultations with certain Federal agencies and departments and consideration of additional relevant factors, the Secretary, through his delegate, the Director of FinCEN, proposes imposition of the special measure authorized by 31 U.S.C. 5318A(b)(5).[17] That special measure authorizes the prohibition of the opening or maintaining of correspondent or payable-through accounts [18] by any domestic financial institution or domestic financial agency for, or on behalf of, a foreign financial institution found to be of primary money laundering concern. A discussion of the additional section 311 factors relevant to the imposition of this particular special measure follows.

1. Whether Similar Actions Have Been or Will Be Taken by Other Nations or Multilateral Groups Against First Merchant Bank

Other countries have not taken any action similar to the one proposed in this proposed rulemaking that would prohibit domestic financial institutions and domestic financial agencies from opening or maintaining a correspondent account for or on behalf of First Merchant Bank. The United States hopes that other countries will take similar action based on the findings contained in this proposed rulemaking. In the meantime, lack of similar action by other countries makes it even more imperative that the fifth special measure be imposed to prevent access by First Merchant Bank to the U.S. financial system.

[15] The persons promoting these fraudulent schemes often claim that an innocent investor's funds will be used to purchase and trade financial instruments issued by well-regarded and financially sound institutions ("prime banks") on clandestine overseas markets to generate huge returns in which the investor will share. However, neither the instruments, nor the markets on which they allegedly trade, exist.

[16] The Susurluk scandal began with an automobile accident in Susurluk, Turkey, on November 3, 1996. Four people occupied the automobile: The deputy police chief of Istanbul; an alleged "extreme nationalist hit man" previously convicted of heroin trafficking and wanted for terrorism; the hit man's girlfriend, who couriered drugs and had been the mistress of several prominent members of the Turkish mafia; and a member of the Turkish Parliament, whose private militia had helped the army fight Kurdish militants. The member of Parliament was the only survivor of the crash and claimed to have lost his memory. The trunk of the car was full of weapons. The incident received national notoriety and served as the basis for Parliamentary investigations into links among politicians, the arms trade, and organized crime.

[17] In connection with this action, FinCEN consulted with the Federal functional regulators, the Department of Justice, and the Department of State.

[18] For purposes of the proposed rule, a correspondent account is defined as an account established to receive deposits from, or make payments or other disbursements on behalf of, a foreign bank, or handle other financial transactions related to the foreign bank.

2. Whether the Imposition of the Fifth Special Measure Would Create a Significant Competitive Disadvantage, Including Any Undue Cost or Burden Associated With Compliance, for Financial Institutions Organized or Licensed in the United States

The fifth special measure sought to be imposed by this proposed rulemaking would prohibit covered financial institutions from opening or maintaining correspondent accounts for, or on behalf of, First Merchant Bank. As a corollary to this measure, covered financial institutions also would be required to apply special due diligence to all of their correspondent accounts to ensure that no such account is being used indirectly to provide services to First Merchant Bank. The burden associated with these requirements is not expected to be significant, given that only a few domestic banks currently maintain correspondent accounts for First Merchant Bank. In addition, all U.S. financial institutions currently apply some degree of due diligence to the transactions or accounts subject to sanctions administered by the Office of Foreign Assets Control (OFAC) of the Department of the Treasury. As explained in more detail in the section-by-section analysis below, financial institutions should be able to adapt their current screening procedures for OFAC sanctions to comply with this special measure. Thus, the special due diligence that would be required by this proposed rulemaking is not expected to impose a significant additional burden upon U.S. financial institutions.

3. The Extent to Which the Proposed Action or Timing of the Action Will Have a Significant Adverse Systemic Impact on the International Payment, Clearance, and Settlement System, or on Legitimate Business Activities of the Bank

This proposed rulemaking targets First Merchant Bank specifically; it does not target a class of financial transactions (such as wire transfers) or a particular jurisdiction. First Merchant Bank is not a major participant in the international payment system and is not relied upon by the international banking community for clearance or settlement services. Moreover, as an offshore bank, it is prohibited from offering banking services to the residents of its home jurisdiction. Thus, the imposition of the fifth special measure against First Merchant Bank will not have a significant adverse systemic impact on the international payment, clearance, and settlement system. In addition, as discussed above, FinCEN believes that First Merchant Bank is rarely, if ever, used for legitimate business transactions and any legitimate use of First Merchant Bank and its subsidiaries is significantly outweighed by their use to promote or facilitate money laundering.

4. The Effect of the Proposed Action on the United States' National Security and Foreign Policy

The exclusion from the U.S. financial system of banks that serve as conduits for significant money laundering activity and participate in other financial crime enhances national security, by making it more difficult for criminals to access the substantial resources of the U.S. financial system. In addition, the imposition of the fifth special measure against First Merchant Bank would complement the U.S. Government's overall foreign policy strategy of making the entry into the U.S. financial system more difficult for high-risk financial institutions located in jurisdictions with lax anti-money laundering controls.

Therefore, after conducting the required consultations and weighing the relevant factors, FinCEN has determined that reasonable grounds exist for concluding that First Merchant Bank is a financial institution of primary money laundering concern and for imposing the special measure authorized by 31 U.S.C. 5318A(b)(5).

III. Section-by-Section Analysis

The proposed rule would prohibit covered financial institutions from establishing, maintaining, administering, or managing in the United States any correspondent account for, or on behalf of, First Merchant Bank. As a corollary to this prohibition, covered financial institutions would be required to apply special due diligence to their correspondent accounts to guard against their indirect use by First Merchant Bank. At a minimum, that special due diligence must include two elements. First, a covered financial institution must notify its correspondent account holders that they may not provide First Merchant Bank with access to the correspondent account maintained at the covered financial institution. Second, a covered financial institution must take reasonable steps to identify any indirect use of its correspondent accounts by First Merchant Bank, to the extent that such indirect use can be determined from transactional records maintained by the covered financial institution in the normal course of business. A covered financial institution must take a risk-based approach when deciding what, if any, other due diligence measures it should adopt to guard against the indirect use of its correspondent accounts by First Merchant Bank, based on risk factors such as the type of services it offers and geographic locations of its correspondents.

A. 103.189(a)—Definitions

1. Correspondent Account

Section 103.189(a)(1) defines the term "correspondent account" by reference to the definition contained in 31 CFR 103.175(d)(1)(ii). Section 103.175(d)(1)(ii) defines a correspondent account to mean an account established to receive deposits from, or make payments or other disbursements on behalf of, a foreign bank, or handle other financial transactions related to the foreign bank.

In the case of a U.S. depository institution, this broad definition would include most types of banking relationships between a U.S. depository institution and a foreign bank, including payable-through accounts.

In the case of securities broker-dealers, futures commission merchants, introducing brokers, and investment companies that are open-end companies (mutual funds), a correspondent account would include any account that permits the foreign bank to engage in (1) trading in securities and commodity futures or options, (2) funds transfers, or (3) other types of financial transactions.

FinCEN is using the same definition for purposes of the proposed rule as that established in the final rule implementing sections 313 and 319(b) of the USA Patriot Act,[19] except that the term is being expanded to cover such accounts maintained by mutual funds, futures commission merchants, and introducing brokers.

2. Covered Financial Institution

Section 103.189(a)(2) of the proposed rule defines covered financial institution to mean all of the following: Any insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)); a commercial bank or trust company; a private banker; an agency or branch of a foreign bank in the United States; a credit union; a thrift institution; a corporation acting under section 25A of the Federal Reserve Act (12 U.S.C. 611 *et seq.*); a broker or dealer registered or required to register with the SEC under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*); a futures commission merchant or an introducing broker registered, or required to register, with

[19] *See* 67 FR 60562 (September 26, 2002), codified at 31 CFR 103.175(d)(1).

the CFTC under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*); and an investment company (as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3)) that is an open-end company (as defined in section 5 of the Investment Company Act of 1940 (15 U.S.C. 80a–5)) that is registered, or required to register, with the SEC under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8).

3. First Merchant Bank

Section 103.189(a)(3) of the proposed rule defines First Merchant Bank to include all subsidiaries, branches, and offices of First Merchant Bank operating in the "TRNC" or in any other jurisdiction. FMB Finance Ltd. (British Virgin Islands), First Merchant International Inc. (Bahamas), First Merchant Finance Ltd. (Ireland), and First Merchant Trust Ltd. (Ireland), and their branches, are included in the definition, although FinCEN understands that First Merchant Bank currently has only the four subsidiaries mentioned here. FinCEN will provide information regarding the existence or establishment of any other subsidiaries as it becomes available; however, covered financial institutions should take commercially reasonable measures to determine whether a customer is a subsidiary of First Merchant Bank.

B. 103.189(b)—Requirements for Covered Financial Institutions

For purposes of complying with the proposed rule's prohibition on the opening or maintaining of correspondent accounts for, or on behalf of, First Merchant Bank, FinCEN expects that a covered financial institution will take such steps that a reasonable and prudent financial institution would take to protect itself from loan or other fraud or loss based on misidentification of a person's status.

1. Prohibition on Direct Use of Correspondent Accounts

Section 103.189(b)(1) of the proposed rule prohibits all covered financial institutions from establishing, maintaining, administering, or managing a correspondent account in the United States for, or on behalf of, First Merchant Bank. The prohibition would require all covered financial institutions to review their account records to ensure that they maintain no accounts directly for, or on behalf of, First Merchant Bank.

2. Special Due Diligence of Correspondent Accounts To Prohibit Indirect Use

As a corollary to the prohibition on the opening or maintaining of correspondent accounts directly for First Merchant Bank, section 103.189(b)(2) requires a covered financial institution to apply special due diligence to its correspondent accounts [20] that is reasonably designed to guard against their indirect use by First Merchant Bank. At a minimum, that special due diligence must include notifying correspondent account holders that they may not provide First Merchant Bank with access to the correspondent account maintained at the covered financial institution. For example, a covered financial institution may satisfy this requirement by transmitting the following notice to all of its correspondent account holders:

Notice: Pursuant to U.S. regulations issued under section 311 of the USA PATRIOT Act, 31 CFR 103.189, we are prohibited from establishing, maintaining, administering, or managing a correspondent account for, or on behalf of, First Merchant Bank or any of its subsidiaries (including FMB Finance Ltd. First Merchant International Inc. First Merchant Finance Ltd. and First Merchant Trust Ltd.). The regulations also require us to notify you that you may not provide First Merchant Bank or any of its subsidiaries with access to the correspondent account you hold at our financial institution. If we become aware that First Merchant Bank or any of its subsidiaries is indirectly using the correspondent account you hold at our financial institution, we will be required to take appropriate steps to block such access, including by terminating your account.

The purpose of the notice requirement is to help ensure cooperation from correspondent account holders in denying First Merchant Bank access to the U.S. financial system, as well as to increase awareness within the international financial community of the risks and deficiencies of First Merchant Bank. However, FinCEN does not require or expect a covered financial institution to obtain a certification from its correspondent account holders that indirect access will not be provided in order to comply with this notice requirement. Instead, methods of compliance with the notice requirement could include, for example, transmitting a one-time notice by mail, fax, or e-mail to a covered financial institution's correspondent account customers, informing them that they may not provide First Merchant Bank with access to the covered financial institution's correspondent account, or including such information in the next regularly occurring transmittal from the covered financial institution to its correspondent account holders. FinCEN specifically solicits comments on the appropriate form, scope, and timing of the notice that would be required under the rule.

A covered financial institution also would be required under this rulemaking to take reasonable steps to identify any indirect use of its correspondent accounts by First Merchant Bank, to the extent that such indirect use can be determined from transactional records maintained by the covered financial institution in the normal course of business. For example, a covered financial institution would be expected to apply an appropriate screening mechanism to be able to identify a funds transfer order that on its face listed First Merchant Bank as the originator's or beneficiary's financial institution, or otherwise referenced First Merchant Bank. An appropriate screening mechanism could be the mechanism used by a covered financial institution to comply with sanctions programs administered by OFAC. FinCEN specifically solicits comments on the requirement under the proposed rule that a covered financial institution take reasonable steps to screen its correspondent accounts to identify any indirect use of such accounts by First Merchant Bank.

Notifying its correspondent account holders and taking reasonable steps to identify any indirect use of its correspondent accounts by First Merchant Bank in the manner discussed above are the minimum due diligence requirements under the proposed rule. Beyond these minimum steps; a covered financial institution should adopt a risk-based approach for determining what, if any, additional due diligence measures it should implement to guard against the indirect use of its correspondent accounts by First Merchant Bank, based on risk factors such as the type of services it offers and the geographic locations of its correspondent account holders.

A covered financial institution that obtains knowledge that a correspondent account is being used by a foreign bank to provide indirect access to First Merchant Bank must take all appropriate steps to block such indirect access, including, when necessary, terminating the correspondent account. A covered financial institution may afford the foreign bank a reasonable opportunity to take corrective action prior to terminating the correspondent account. Should the foreign

[20] Again, for purposes of the proposed rule, a correspondent account is defined as an account established to receive deposits from, or make payments or other disbursements on behalf of, a foreign bank, or handle other financial transactions related to the foreign bank.

bank refuse to comply, or if the covered financial institution cannot obtain adequate assurances that the account will no longer be used for impermissible purposes, the covered financial institution must terminate the account within a commercially reasonable time. This means that the covered financial institution should not permit the foreign bank to establish any new positions or execute any transactions through the account, other than those necessary to close the account. A covered financial institution may reestablish an account closed under the proposed rule if it determines that the account will not be used to provide banking services indirectly to First Merchant Bank. FinCEN specifically solicits comment on the requirement under the proposed rule that a covered financial institution block indirect access to First Merchant Bank, once such indirect access is identified.

3. Reporting Not Required

Section 103.189(b)(3) of the proposed rule clarifies that the rule does not impose any reporting requirement upon any covered financial institution that is not otherwise required by applicable law or regulation. A covered financial institution must, however, document its compliance with the requirement that it notify its correspondent account holders that they may not provide First Merchant Bank with access to the correspondent account maintained at the covered financial institution.

IV. Request for Comments

FinCEN invites comments on all aspects of the proposal to prohibit the opening or maintaining of correspondent accounts for or on behalf of First Merchant Bank, and specifically invites comments on the following matters:

1. The appropriate form, scope, and timing of the notice to correspondent account holders that would be required under the rule;

2. The appropriate scope of the proposed requirement for a covered financial institution to take reasonable steps to identify any indirect use of its correspondent accounts by First Merchant Bank;

3. The appropriate steps a covered financial institution should take once it identifies an indirect use of one of its correspondent accounts by First Merchant Bank; and

4. The impact of the proposed special measure upon any legitimate transactions conducted with First Merchant Bank by United States businesses, United Nations agencies, and non-governmental and private voluntary organizations doing business in or operating in the "TRNC."

V. Regulatory Flexibility Act

It is hereby certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. FinCEN understands that First Merchant Bank currently maintains only a few correspondent accounts in the United States, and that those accounts are maintained at large banks. Thus, the prohibition on maintaining such accounts will not have a significant impact on a substantial number of small entities. In addition, all U.S. persons, including U.S. financial institutions, currently exercise some degree of due diligence in order to comply with U.S. sanctions programs administered by OFAC, which can be easily modified to monitor for the use of correspondent accounts by First Merchant Bank. Thus, the special due diligence that would be required by this proposed rulemaking—*i.e.*, the one-time transmittal of notice to correspondent account holders and screening of transactions to identify any indirect use of a correspondent account—is not expected to impose a significant additional economic burden upon small U.S. financial institutions. FinCEN invites comments from members of the public who believe there will be a significant economic impact on small entities.

VI. Paperwork Reduction Act

The collection of information contained in this proposed rule is being submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent (preferably by fax (202–395–6974)) to Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (1506), Washington, DC 20503 (or by e-mail to *jlackeyj@omb.eop.gov*), with a copy to FinCEN by mail or e-mail at the addresses previously specified. Comments on the collection of information should be received by September 23, 2004. In accordance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), and its implementing regulations, 5 CFR 1320, the following information concerning the collection of information as required by 31 CFR 103.189 is presented to assist those persons wishing to comment on the information collection.

The collection of information in this proposed rule is in 31 CFR 103.189(b)(2)(i) and 31 CFR 103.189(b)(3)(i). The disclosure requirement in 31 CFR 103.189(b)(2)(i) is intended to ensure cooperation from correspondent account holders in denying access to the U.S. financial system, as well as to increase awareness within the international financial community of the risks and deficiencies of First Merchant Bank. The information required to be maintained by 31 CFR 103.189(b)(3)(i) will be used by Federal agencies and certain self-regulatory organizations to verify compliance by covered financial institutions with the provisions of 31 CFR 103.189. The class of financial institutions affected by the disclosure requirement is identical to the class of financial institutions affected by the recordkeeping requirement. The collection of information is mandatory.

Description of Affected Financial Institutions: Banks, broker-dealers in securities, futures commission merchants and introducing brokers, and mutual funds maintaining correspondent accounts.

Estimated Number of Affected Financial Institutions: 5,000.

Estimated Average Annual Burden Hours per Affected Financial Institution: The estimated average burden associated with the collection of information in this proposed rule is 1 hour per affected financial institution.

Estimated Total Annual Burden: 5,000 hours.

FinCEN specifically invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the mission of FinCEN, including whether the information shall have practical utility; (b) the accuracy of FinCEN's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information required to be maintained; (d) ways to minimize the burden of the required collection of information, 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 maintain the information.

VII. Executive Order 12866

This proposed rule is not a significant regulatory action for purposes of Executive Order 12866, "Regulatory Planning and Review."

List of Subjects in 31 CFR Part 103

Administrative practice and procedure, Banks and banking, Brokers, Counter-money laundering, Counter-terrorism, and Foreign banking.

Authority and Issuance

For the reasons set forth in the preamble, part 103 of title 31 of the

Code of Federal Regulations is proposed to be amended as follows:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FINANCIAL TRANSACTIONS

1. The authority citation for part 103 is revised to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314, 5316–5332; title III, secs. 311, 312, 313, 314, 319, 326, 352, Pub. L. 107–56, 115 Stat. 307.

2. The undesignated center heading preceding §103.185 is removed.

3. Subpart I of part 103 is proposed to be amended by adding new § 103.189 as follows:

§ 103.189 Special measures against First Merchant Bank.

(a) *Definitions.* For purposes of this section:

(1) *Correspondent account* has the same meaning as provided in § 103.175(d)(1)(ii).

(2) *Covered financial institution* has the same meaning as provided in § 103.175(f)(2) and also includes:

(i) A futures commission merchant or an introducing broker registered, or required to register, with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*); and

(ii) An investment company (as defined in section 3 of the Investment Company Act (15 U.S.C. 80a–3)) that is an open-end company (as defined in section 5 of the Investment Company Act (15 U.S.C. 80a–5)) and that is registered, or required to register, with the Securities and Exchange Commission under section 8 of the Investment Company Act (15 U.S.C. 80a–8).

(3) *First Merchant Bank* means any headquarters, branch, office, or subsidiary of First Merchant Bank OSH Ltd operating in the "Turkish Republic of Northern Cyprus" ("TRNC") or in any other jurisdiction, including FMB Finance Ltd (British Virgin Islands), First Merchant International Inc (Bahamas), First Merchant Finance Ltd (Ireland), and First Merchant Trust Ltd (Ireland).

(4) *Subsidiary* means a company of which more than 50 percent of the voting stock or analogous equity interest is owned by another company.

(b) *Requirements for covered financial institutions—(1) Prohibition on direct use of correspondent accounts.* A covered financial institution shall terminate any correspondent account that is established, maintained, administered, or managed in the United States for, or on behalf of, First Merchant Bank.

(2) *Special due diligence of correspondent accounts to prohibit indirect use.* (i) A covered financial institution shall apply special due diligence to its correspondent accounts that is reasonably designed to guard against their indirect use by First Merchant Bank. At a minimum, that special due diligence must include:

(A) Notifying correspondent account holders that they may not provide First Merchant Bank with access to the correspondent account maintained at the covered financial institution; and

(B) Taking reasonable steps to identify any indirect use of its correspondent accounts by First Merchant Bank, to the extent that such indirect use can be determined from transactional records maintained in the covered financial institution's normal course of business.

(ii) A covered financial institution shall take a risk-based approach when deciding what, if any, additional due diligence measures it should adopt to guard against the indirect use of its correspondent accounts by First Merchant Bank.

(iii) A covered financial institution that obtains knowledge that a correspondent account is being used by the foreign bank to provide indirect access to First Merchant Bank, shall take all appropriate steps to block such indirect access, including, where necessary, terminating the correspondent account.

(3) *Recordkeeping and reporting.* (i) A covered financial institution is required to document its compliance with the notice requirement set forth in paragraph (b)(2)(i)(A) of this section.

(ii) Nothing in this section shall require a covered financial institution to report any information not otherwise required to be reported by law or regulation.

Dated: August 18, 2004.

William J. Fox,

Director, Financial Crimes Enforcement Network.

[FR Doc. 04–19267 Filed 8–23–04; 8:45 am]

BILLING CODE 4810–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R07–OAR–2004–MO–0002; FRL–7805–2]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve a revision to the Missouri State Implementation Plan (SIP) which pertains to a state rule and maintenance plan applicable to the Doe Run Resource Recycling Lead Facility at Buick, Missouri. This revision revises certain furnace production limits at the facility, which are contained in the state rule and maintenance plan.

Approval of this revision will ensure consistency between the state and federally-approved rule and maintenance plan, and ensure Federal enforceability of the revised state rule and maintenance plan.

DATES: Comments on this proposed action must be received in writing by September 23, 2004.

ADDRESSES: Comments may be mailed to Judith Robinson, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. Comments may also be submitted electronically or through hand delivery/courier; please follow the detailed instructions in the **ADDRESSES** section of the direct final rule which is located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Judith Robinson at (913) 551–7825, or by e-mail at *robinson.judith@epa.gov.*

SUPPLEMENTARY INFORMATION: In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the rules section of this **Federal Register.**

Dated: August 9, 2004.

James B. Gulliford,

Regional Administrator, Region 7.

[FR Doc. 04–19338 Filed 8–23–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[R07–OAR–2004–IA–0003; FRL–7805–3]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the Iowa section 111(d) plan for the purpose of adopting by reference the commercial and industrial solid waste incineration (CISWI) rule that was Federally promulgated on October 3, 2003. The CISWI rule contains eleven major components that address the regulatory requirements applicable to existing CISWI units. When adopted by reference, these components will constitute the state plan.

DATES: Comments on this proposed action must be received in writing by September 23, 2004.

ADDRESSES: Comments may be mailed to Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. Comments may also be submitted electronically or through hand delivery/courier; please follow the detailed instructions in the Addresses section of the direct final rule which is located in the rules section of this **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Heather Hamilton at (913) 551–7039, or by e-mail at *hamilton.heather@epa.gov.*

SUPPLEMENTARY INFORMATION: In the final rules section of the **Federal Register,** EPA is approving the state's submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the rules section of this **Federal Register.**

Dated: August 12, 2004.

William A. Spratlin,

Acting Regional Administrator, Region 7.

[FR Doc. 04–19336 Filed 8–23–04; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 296

[Docket No. MARAD–2004–18489]

RIN 2133–AB62

Maritime Security Program

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice of extension of comment period.

SUMMARY: The Maritime Administration is hereby giving notice that the closing date for filing comments on the Maritime Security Program interim final rule (Docket No. MARAD 2004–18489) has been extended to the close of business (5 p.m. e.t.) on August 30, 2004. The interim final rule was published in the **Federal Register** on July 20, 2004 (69 FR 43328).

Dated: August 18, 2004.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 04–19322 Filed 8–23–04; 8:45 am]

BILLING CODE 4910–81–P

Notices

Federal Register
Vol. 69, No. 163
Tuesday, August 24, 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 COMMERCE

Bureau of Economic Analysis

Proposal To Collect Information on the Expenditures Incurred by Recipients of Bio-Medical Research Awards From the National Institutes of Health (NIH)

ACTION: Proposed collection: comment request.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the Department of Commerce invites the general public and other Federal agencies 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)).

DATES: Written comments must be submitted on or before October 25, 2004.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th Street and Constitution Avenue, NW., Washington, DC 20230, or via Internet at *DHynek@doc.gov*.

FOR FURTHER INFORMATION: Additional information or copies of the information collection instruments and instructions should be directed to: Ms. Teresita Teensma, U.S. Department of Commerce, Bureau of Economic Analysis, BE–57, Washington, DC 20230 (Telephone: (202) 606–9792, Internet: *Teresita.Teensma@bea.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

The survey to obtain the distribution of expenditures incurred by recipients of biomedical research awards from the National Institutes of Health Research (NIH) will provide information on how the NIH award amounts are expended across several major categories. This information, along with wage and price data from other published sources, will be used to generate the Biomedical Research and Developmental Price Index (BRDPI). The Bureau of Economic Analysis (BEA) of the Department of Commerce develops this index for the National Institutes of Health (NIH) under reimbursable contract. The BRDPI is an index of prices paid for the labor, supplies, equipment, and other inputs required to perform the biomedical research the NIH supports in its intramural laboratories and through its awards to extramural organizations. The BRDPI is a vital tool for planning the NIH research budget and analyzing future NIH programs. A survey of award recipient entities is currently the only means for updating the expenditure categories that are used to prepare the BRDPI.

II. Authority

This survey will be voluntary. The authority for the National Institutes of Health to collect information for the BRDPI is provided in 45 CFR subpart C, Post-Award Requirements, section 74.21 which sets forth explicit standards for grantees in establishing and maintaining financial management systems and records and section 74.53 which provides for the retention of such records as well as NIH access to such records.

BEA will administer the survey and analyze the survey results on behalf of NIH, through an interagency agreement between the two agencies. The authority for the NIH to contract with DOC to make this collection is the Economy Act (31 U.S.C. 1535 and 1536).

The "Special Studies" authority, 15 U.S.C. 1525 (first paragraph), permits DOC to provide, upon the request of any person, firm or public or private organization (a) Special studies on matters within the authority of the Department of Commerce, including preparing from its records special compilations, lists, bulletins, or reports, and (b) furnishing transcripts or copies of its studies, compilations and other records. BEA has programmatic authority to perform this work pursuant to 15 U.S.C. 1527a.

IH's support for this research is consistent with the Agency's duties and authority under 42 U.S.C. 282.

The information provided by the respondents will be held confidential and be used for exclusively statistical purposes. This pledge of confidentiality is made under the Confidential Information Protection provisions of title V, subtitle A, Public Law 107–347. Title V is the Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA). Section 512 (on Limitations on Use and Disclosure of Data and Information) of the Act, provides that "data or information acquired by an agency under a pledge of confidentiality and for exclusively statistical purposes shall be used by officers, employees, or agents of the agency exclusively for statistical purposes. Data or information acquired by an agency under a pledge of confidentiality for exclusively statistical purposes shall not be disclosed by an agency in identifiable form, for any use other than an exclusively statistical purpose, except with the informed consent of the respondent."

Responses will be kept confidential and will not be disclosed in identifiable form to anyone other than employees or agents of BEA without your consent. By law, each employee as well as each agent is subject to a jail term of up to 5 years, a fine of up to $250,000, or both if he or she makes public any identifiable information that you report about your business or institution.

Section 515 of the Information Quality Guidelines applies to this survey. The collection and use of this information complies with all applicable information quality guidelines, *i.e.*, those of the Office of Management and Budget, Department of Commerce, and BEA.

III. Method of Collection

A survey questionnaire with a cover letter that includes a brief description of, and rationale for, the survey will be sent to potential respondents by the first week of June of each year. A report of the respondent's expenditures of the NIH award amounts, following the proposed format for expenditure categories attached to the survey's cover letter, will be requested to be returned no later than 60 days after mailing. Survey respondents will be selected on the basis of award levels, which determine the weight of the respondent in the biomedical research and development price index. Potential respondents will include (1) The top 100 organizations in total awards, which account for about 74 percent of total

awards; (2) the top 40 organizations that are not primarily in the "Research and Development (R&D) contracts" category, and which account for about 4 percent of total awards; and, (3) the top 10 organizations that are primarily in the "R&D contracts" category, and which account for less than one percent of total awards.

IV. Data

OMB Number:

Form Number:

Type of Review: Regular submission.

Affected Public: Universities or other organizations that are NIH award recipients.

Estimated Number of Respondents: 105.

Estimated Time Per Response: 11.2 hours.

Estimated Total Annual Burden: 1,176 hours.

Estimated Total Annual Cost: $43,982 (Assumes a 70 percent response rate, an estimated reporting burden of 11.2 hours and an estimated hourly cost of $37.40.)

V. 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 NIH, including whether the information has 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: August 18, 2004.

Madeline Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–19302 Filed 8–23–04; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

International Trade Administration

(A–557–805)

Extruded Rubber Thread From Malaysia; Notice of Final Results of Changed Circumstances Review of the Antidumping Duty Order and Intent To Revoke Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On March 9, 2004, the Department published a notice of initiation and preliminary results of changed circumstances review and preliminarily found that there was a reasonable basis to determine that changed circumstances sufficient to warrant revocation exist. In our preliminary results, we gave interested parties an opportunity to comment. *See* 69 FR 10980 (Mar. 9, 2004). In March and April, 2004, Heveafil Sdn. Bhd., Filmax Sdn. Bhd., and Heveafil USA Inc. (collectively "Heveafil"), a producer/exporter of subject merchandise and an interested party in this proceeding, and the trustee in the bankruptcy for North American Rubber Thread Co., Inc. (North American) submitted case and rebuttal briefs, respectively.

EFFECTIVE DATE: August 24, 2004.

FOR FURTHER INFORMATION CONTACT: Irina Itkin or Elizabeth Eastwood, Office 2, AD/CVD Enforcement Group I, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0656 or (202) 482–3874, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 9, 2004, the Department published in the **Federal Register** a notice of initiation and preliminary results of changed circumstances review and intent to revoke the order on extruded rubber thread from Malaysia. *See Notice of Initiation of Changed Circumstances Review of the Antidumping Duty Order, Preliminary Results of Changed Circumstances Review, and Intent To Revoke Antidumping Duty Order*, 69 FR 10980 (Mar. 9, 2004). On March 24, 2004, Heveafil submitted a case brief. On May 12, 2004, North American submitted a rebuttal brief. We received no other comments from interested parties on the Department's preliminary results.

Scope of the Order

The product covered by this review is extruded rubber thread. Extruded rubber thread is defined as vulcanized rubber thread obtained by extrusion of stable or concentrated natural rubber latex of any cross sectional shape, measuring from 0.18 mm, which is 0.007 inch or 140 gauge, to 1.42 mm, which is 0.056 inch or 18 gauge, in diameter. Extruded rubber thread is currently classifiable under subheading 4007.00.00 of the *Harmonized Tariff Schedule of the United States* (HTSUS). The HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this review is dispositive.

Analysis of Comments Received

All issues raised in the case briefs by parties to this changed circumstances review are addressed in the "Issues and Decision Memorandum" (Decision Memo) from Jeffrey May, Deputy Assistant Secretary, to James J. Jochum, Assistant Secretary for Import Administration, dated August 11, 2004, which is 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 Memo, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit in Room B–099 of the main Commerce Building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov/frn*. The paper copy and electronic version of the Decision Memo are identical in content.

Final Results

After our analysis of the comments received, we determine that it is appropriate to revoke the antidumping duty order on extruded rubber thread from Malaysia, effective as of October 1, 2003.

Instructions to U.S. Customs and Border Protection

We will instruct U.S. Customs and Border Protection (CBP) to liquidate without regard to antidumping duties, and to refund any estimated antidumping duties collected for all entries of extruded rubber thread from Malaysia, made on or after October 1, 2003, the first day of the most recent period of administrative review and the only period for which an administrative review has not been completed, in accordance with 19 CFR 351.222. We will also instruct CBP to pay interest on

such refunds in accordance with section 778 of the Act.

Notification Regarding APO

This notice also 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. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is published in accordance with sections 751(b)(1) and (d) and 777(i) of the Act, and with 19 CFR 351.221(c)(3).

Dated: August 18, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

Appendix Issues in the Decision Memorandum

Comment 1: Whether the Department Must Liquidate Without Regard to Antidumping Duties All Unliquidated Entries

[FR Doc. E4–1895 Filed 8–23–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081904A]

Proposed Information Collection; Comment Request; Northeast Region Gear Identification Collection

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, 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)).

DATES: Written comments must be submitted on or before October 25, 2004.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (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 Brian Hooker, National Marine Fisheries Service, 1 Blackburn Drive, Gloucester, MA 01930.

SUPPLEMENTARY INFORMATION:

I. Abstract

Regulations at 50 CFR 648.84(a), (b), and (d),§ 648.123(b)(3), § 648.144(b)(1), and § 697.21(a) and (b) require that Federal fishing permit holders using specified fishing gear mark that gear with specified information for the purposes of identification (e.g., official vessel number or other method identified in the regulations). The regulations also specify how the gear is to be marked for the purposes of visibility (e.g., buoys, radar reflectors, or other method identified in the regulations). The display of the identifying characters on fishing gear aids in fishery law enforcement. The marking of gear for visibility increases safety at sea.

II. Method of Collection

No information is submitted to the National Marine Fisheries Service (NMFS) as a result of this collection. The vessel official number or other means of identification specified in the regulations must be affixed to the buoy or other markers specified in the regulations.

III. Data

OMB Number: 0648–0351.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Individuals or households; business or other for-profit organizations.

Estimated Number of Respondents: 4,388.

Estimated Time Per Response: 8.86 hours.

Estimated Total Annual Burden Hours: 38,878 hours.

Estimated Total Annual Cost to Public: $43,880.

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: August 18, 2004.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–19348 Filed 8–23–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for the Channel Islands National Marine Sanctuary Advisory Council

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The Channel Islands National Marine Sanctuary (CINMS or Sanctuary) is seeking applicants for the Chumash Community seat on its Sanctuary Advisory Council (Council). Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; views regarding the conservation and management of marine resources; and the length of residence in the area affected by the Sanctuary. Applicants who are chosen as members should expect to serve two-year terms, pursuant to the Council's Charter.

DATES: Applications are due by September 30, 2004.

ADDRESSES: Application kits may be obtained on line at *http://channelislands.noaa.gov*, or from Michael Murray at 115 Harbor Way, Suite 150, Santa Barbara, CA 96825. Completed applications should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Michael Murray at (805) 884–1464, or *michael.murray@noaa.gov*, or visit the CINMS Web sites at *http://channelislands.noaa.gov*.

SUPPLEMENTARY INFORMATION: The CINMS Advisory Council was orginally established in December 1998 and has a broad representation consisting of 21 members, including ten government agency representatives and eleven members from the general public. The Council functions in an advisory capacity to the Sanctuary Manager. The Council works in concert with the Sanctuary Manager by keeping him or her informed about issues of concern throughout the Sanctuary, offering recommendations on specific issues, and aiding the Manager in achieving the goals of the Sanctuary program. Specifically, the Council's objectives are to provide advice on: (1) Protecting natural and cultural resources, and identifying and evaluating emergent or critical issues involving Sanctuary use or resources; (2) Identifying and realizing the Sanctuary's research objectives; (3) Identifying and realizing educational opportunities to increase the public knowledge and stewardship of the Sanctuary environment; and (4) Assisting to develop an informed constituency to increase awareness and understanding of the purpose and value of the Sanctuary and the National Marine Sanctuary Program.

Authority: 16 U.S.C. Section 1431, *et seq.* (Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: August 17, 2004.

Daniel J. Basta,

Director, National Marine Sanctuary Program, National Ocean Services, National Oceanic and Atmospheric Administration.

[FR Doc. 04–19326 Filed 8–23–04; 8:45 am]

BILLING CODE 3510–NK–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081604D]

Advisory Committee and Species Working Group Technical Advisor Appointments

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

ACTION: Nominations.

SUMMARY: NMFS is soliciting nominations to the Advisory Committee to the U.S. Section to the International Commission for the Conservation of Atlantic Tunas (ICCAT) as established by the Atlantic Tunas Convention Act (ATCA). NMFS is also soliciting nominations for technical advisors to the Advisory Committee's species working groups.

DATES: Nominations are due by October 15, 2004.

ADDRESSES: Nominations to the Advisory Committee or to serve as a technical advisor to a species working group should be sent to Dr. William T. Hogarth, Assistant Administrator, National Marine Fisheries Service, NOAA, 1315 East-West Highway, Silver Spring, MD 20910. A copy should also be sent to Erika Carlsen, International Fisheries Division, Office of Sustainable Fisheries, NMFS, Room 13114, 1315 East West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Erika Carlsen, 301–713–2276.

SUPPLEMENTARY INFORMATION: Section 971(b) of the ATCA (16 U.S.C. 971 *et seq.*) requires that an advisory committee be established that shall be composed of: (1) Not less than five nor more than 20 individuals appointed by the U.S. Commissioners to ICCAT who shall select such individuals from the various groups concerned with the fisheries covered by the ICCAT Convention; and (2) the chairs (or their designees) of the New England, Mid-Atlantic, South Atlantic, Caribbean, and Gulf Fishery Management Councils. Each member of the Advisory Committee appointed under item (1) shall serve for a term of two years and shall be eligible for reappointment. Members of the Advisory Committee may attend all public meetings of the ICCAT Commission, Council, or any Panel and any other meetings to which they are invited by the ICCAT Commission, Council, or any Panel. The Advisory Committee shall be invited to attend all nonexecutive meetings of the U.S. Commissioners to ICCAT and, at such meetings, shall be given the opportunity to examine and be heard on all proposed programs of investigation, reports, recommendations, and regulations of the ICCAT Commission. Members of the Advisory Committee shall receive no compensation for such services. The Secretary of Commerce and the Secretary of State may pay the necessary travel expenses of members of the Advisory Committee.

There are currently 20 appointed Advisory Committee members. The terms of these members expire on December 31, 2004. New appointments will be made as soon as possible, but will not take effect until January 1, 2005.

Section 971(b)(1) of the ACTA specifies that the U.S. Commissioners may establish species working groups for the purpose of providing advice and recommendations to the U.S. Commissioners and to the Advisory Committee on matters relating to the conservation and management of any highly migratory species covered by the ICCAT Convention. Any species working group shall consist of no more than seven members of the Advisory Committee and no more than four scientific or technical personnel, as considered necessary by the Commissioners. Currently, there are four species working groups advising the Committee and the U.S. Commissioners. Specifically, there is a Bluefin Tuna Working Group, a Swordfish Working Group, a Billfish Working Group, and a BAYS (Bigeye, Albacore, Yellowfin, and Skipjack) Tunas Working Group. Technical Advisors to the species working groups serve at the pleasure of the U.S. Commissioners; therefore, the Commissioners can choose to alter appointments at any time.

Nominations to the Advisory Committee or to a species working group should include a letter of interest and a resume or curriculum vitae. Letters of recommendation are useful but not required. Self-nominations are acceptable. When making a nomination, please clearly specify which appointment (Advisory Committee member or technical advisor to a species working group) is being sought. Requesting consideration for placement on both the Advisory Committee and a species working group is acceptable. Those interested in a species working group technical advisor appointment should indicate which of the four working groups is preferred. Placement on the requested species working group, however, is not guaranteed.

Dated: August 18, 2004.

Alan D. Risenhoover,

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

[FR Doc. 04–19350 Filed 8–23–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Coral Reef Conservation Program Fiscal Year 2003 Funding Guidance—Correction

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

ACTION: Coral Reef Conservation Program fiscal year 2003 funding guidance—correction.

SUMMARY: In the notice of availability of Federal assistance for coral reef conservation activities in the **Federal Register** of January 17, 2003, Docket No. 021226332–2332–01, make the following correction:

On pages 2518 and 2519, IV. CORAL REEF ECOSYSTEM RESEARCH A. Program Description, the first paragraph should read as follows:

In FY 2003, the Program is providing funding to NOAA's Undersea Research Program (NURP) to cooperatively administer a NURP coral reef grant program for Florida; and in FY 2004, the Program is providing fund to NURP to cooperatively administer NURP coral reef grant programs for the Caribbean, Florida, the Southeastern U.S., Gulf of Mexico, Hawaii, and the Western Pacific. In FY 2003, the Southeastern U.S. and Gulf of Mexico Center will announce a joint program in partnership with the U.S. Environmental Protection Agency and the Sanctuary Friends of the Florida Keys, which will support research in the Florida Keys National Marine Sanctuary. In FY 2004, the Hawaii Undersea Research Laboratory will administer a program to address research needs for Hawaii and the Western Pacific; the Caribbean Marine Research Center will address research needs in the U.S. Caribbean; and the Southeastern U.S. and the Mexico Center will address research needs for Florida, the Southeastern U.S. and the Gulf of Mexico. Requests for proposals will be available at *http://www.nurp.noaa.gov/noaacoral.html* or by contacting the appropriate regional contact persons identified in the contact information section below. The grant eligibility and matching requirements will be consistent with the NOAA Coral Reef Conservation Grant Program Guidelines.

FOR FURTHER INFORMATION CONTACT: Bill Millhouser, Coastal Programs Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, N/ORM3, Silver Spring, Maryland 20910, (301) 713–3155, Extension 189.

Federal Domestic Assistance Catalog 11.419, Coastal Zone Management Program Administration.

Dated: August 12, 2004.

Eldon Hout,

Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 04–19327 Filed 8–23–04; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072204A]

Taking Marine Mammals Incidental to Specified Activities; Sandholdt Road Bridge Replacement, Moss Landing, California

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

ACTION: Notice of receipt of application and proposed authorization for an incidental take authorization; request for comments.

SUMMARY: NMFS has received a request from the California Department of Transportation (CALTRANS) for an Incidental Harassment Authorization (IHA) to take small numbers of marine mammals, by harassment, incidental to the replacement of the Sandholdt Road Bridge (Bridge) in Moss Landing, Monterey County, CA. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an IHA to CALTRANS to take, by incidental harassment, small numbers of Pacific harbor seals and possibly California sea lions for 1 year.

DATES: Comments and information must be received no later than September 23, 2004.

ADDRESSES: Comments on the application should be addressed to Steve Leathery, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225. The mailbox address for providing e-mail comments is *PR1.072204A@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: 07224A. NMFS is not responsible for e-mail comments sent to addresses other than the one provided here. Comments sent via e-mail, including all attachments, must not exceed a 10–megabyte file size. A copy of the application containing a list of the references used in this document may be obtained by writing to this address or by telephoning the contacts listed here and is also available at: *http://www.nmfs.noaa.gov/prot_res/PR2/Small_Take/smalltake_info.htm#applications*

FOR FURTHER INFORMATION CONTACT: Kenneth Hollingshead, Office of Protected Resources, NMFS, (301) 713–2322, ext 128 or Monica DeAngelis, (562) 980–3232.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have no more than a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as: "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Except for certain categories of actions not pertinent here, the MMPA defines "harassment" as:

> Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Subsection 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On February 26, 2004, NMFS received an IHA application from CALTRANS.

The IHA request is for the potential harassment of small numbers of Pacific harbor seals (*Phoca vitulina*) and possibly some California sea lions (*Zalophus californianus*), incidental to demolition of the current Bridge and construction of a new Bridge. Construction is scheduled to extend from early to mid–2005 until the fall of 2006. A detailed description of the work planned is contained in the CALTRANS application and in LSA Associates, Inc. (1999).

The County of Monterey, with funding from the Federal Highway Administration (FHWA), proposes to replace the existing one-lane Bridge over the Moss Landing Slough. Sandholdt Road, a two-lane county road, carries an average of about 2700 vehicles per day between Moss Landing Road and the island community of Moss Landing. The Bridge is of unknown age with a deck replacement having taken place over 54 years ago. The wooden piling system has been weakened by marine bore worms and is decaying. The Bridge is therefore at the end of its useful service life. The one-lane Bridge is a traffic safety concern and does not meet Federal standards for rural roads, which require such bridges to have a minimum of two traffic lanes and safe access for pedestrians. The Bridge does not meet structural capacity requirements as it is incapable of withstanding loads over minimum highway legal loads. Further, because of its age and dilapidated condition, the structure is not capable of withstanding a significant earthquake without the possibility of incurring significant damage that may require the Bridge to be closed for repairs. Bridge closure may result in significant economic impact to the community, as the Bridge is the only public access point to the island.

Description of the Activity

The proposed new Bridge will improve traffic operations and safety and provide safe access for pedestrians and bicyclists. The following improvements are planned: (1) Construct a new 321–ft (98–m) long bridge with two 12–ft (3.6–m) travel lanes; (2) improve pedestrian safety by constructing a 5–ft (1.5–m) sidewalk on the north side of the new Bridge with pedestrian lighting; (3) improve safety for bicyclists by constructing 4–ft (1.2–m) bicycle lanes on each side of the new Bridge; and (4) improve the turn radius of the Bridge approach on the west and the Bridge alignment with Sandholdt Road on the east by constructing the new Bridge 23 m (75 ft) south of the existing structure.

The Bridge will be supported by two bridge abutments and 3 pairs of 1.7–m (5.6–ft) diameter columns. Each of the columns will be supported by Cast-In-Shell (CISS) pile of the same diameter. Each CISS pile will be installed using standard bridge construction practices. This includes the use of a vibratory hammer to drive the piles down into the substrate and an impact hammer to drive the piles the last 1.7 m (5.6 ft) in order to determine if load capacity has been reached.

The Bridge replacement work will include construction of a temporary access trestle for equipment access during construction that includes installation of wood pilings, installation of temporary supporting framework (falsework) piles, and, later, removal of existing wood piles. The piles and trestle deck will be installed at the same time and will use the crane to drive the piles that were previously mounted on the adjacent trestle span. The falsework piles will be installed in a similar manner. Construction of the access trestle and falsework will require a total of approximately 200 piles (0.3 to 0.6 m by 15 m (11.8 in. to 24 in. by 49 ft), wood or steel). These piles could be installed with a vibratory hammer and/or drop (impact) hammer. The time to install each pile will be about 30 to 60 minutes.

Construction of the bridge span will require 6 piles (1.7 by 31.75 m (5.6 by 104 ft)) in the slough and 12 piles (0.61 by 19.05 m (2 by 62.5 ft)) on the shore, for the abutment foundation. These will be the CISS piles. They will be installed using a vibratory hammer and a drop (impact) hammer.

A work barge will be anchored at the Bridge site for approximately three months to assist with the construction of the temporary access trestle, which will take about two weeks. It will take approximately two weeks to place embankment earthwork, four weeks to drive the bridge piles, three weeks to drive the falsework piles, and approximately three weeks to construct the abutments. After the falsework is in place, the superstructure will take approximately 36 weeks to construct.

Once the superstructure is completed, it will take two weeks to remove the falsework piles, two weeks to remove the access trestle, and about four weeks to remove the existing Bridge. The existing piles will be removed from the channel by a crane lifting and applying vibration. Additional dilapidated pilings along the adjacent shoreline will be removed in a similar manner. These activities will presumably take place under a future IHA because they will occur after the proposed IHA expires.

CALTRANS has divided the work year into two seasons, an in-water period and an out-of-water period. In-water construction is limited to the months of June through October, as required by condition 15 of the California Coastal Commission's Coastal Development Permit. Activities are considered "in-water" regardless of the actual tide level at the time of construction. Most of the activities described in this document are considered "in-water" activities.

Out-of-water construction activities are defined as any activities located above mean high water (MHW), which is +0.61 m at the Sandholdt Road Bridge site. Certain activities, however, are classified as both in-water and out-of-water because some portions of the activity take place above and below the MHW. Because construction activities have the potential to disturb harbor seals hauled out along the Old Salinas River, an IHA is warranted.

Description of Habitat and Marine Mammals Affected by the Activity

A description of the habitat and its associated marine mammals affected by the proposed Bridge replacement project can be found in the CALTRANS application and in CALTRANS' Marine Mammal and Bird Mitigation Plan (CALTRANS, 2004). Harbor seals routinely move between the Old Salinas River, beneath and south of the existing Bridge, and the adjoining Moss Landing Harbor, on the north side of the site. Approximately 35 individuals are known to haul out along the Old Salinas River approximately 500 to 800 m (1640 to 2625 ft) south of the current Bridge location, with more seals generally found at about 800 m (2625 ft) south of the Bridge. California sea lions only occasionally transit through the project area, but are not known to haul-out in the area.

Marine Mammals

General information on harbor seals and other marine mammal species found in Central California waters can be found in Carretta *et al.* (2002, 2003), which are available at the following URL: *http://www.nmfs.noaa.gov/prot_res/PR2/Stock_Assessment_Program/sars.html*. Please refer to these documents for information on these species. The marine mammals likely to be affected by work in the Bridge area are limited to harbor seals and California sea lions. The harbor seal and California sea lion are the only marine mammal species expected to be found regularly in the Bridge area and are described in detail below.

Harbor Seals

The California stock of harbor seals is comprised of those seals found at the 400 to 500 haul-out sites along the mainland coast and offshore islands of California. Based on the most recent counts, the California stock of the Pacific harbor seal is estimated at 27,863 (Carretta *et al.*, 2003). A rapid increase in harbor seal abundance was recorded from 1972 to 1990, but there has been no net growth along the mainland or Channel Islands since 1990. The annual growth rate estimate is 3.5 percent, however, the current rate of production is greater than this observed rate because fishery mortality takes a fraction of the net production (Carretta *et al.*, 2003).

Harbor seals are considered non-migratory, generally making local movements in association with the distribution of food resources, tides, weather, season and breeding activities (Bigg, 1973, 1981; Stewart and Yochem, 1994). Harbor seals are found in estuaries and marine embayments, and typically rest ashore or haul out on beaches and tidal-inundated habitats such as mudflats, marshes, and near-shore rocky outcroppings (Kopec and Harvey, 1995; Zeiner et al., 1990). They often use these isolated, undisturbed sites for pupping, molting, and resting.

Harbor seals are very skittish by nature, and a startle response in harbor seals can vary from a temporary state of agitation by a few individuals to the permanent abandonment of the haul out site by the entire colony. Normally, when harbor seals are frightened by a noise, the approach of a boat, plane, human, predator, or another seal, for example, they will move rapidly to the water or flush. Disturbances have the potential to cause a more serious effect during pupping or nursing, or when aggregations are dense during the molting season, as mothers may become separated from their pups or individuals may be injured.

Harbor seals feed opportunistically on a variety of fish, crustaceans, and cephalapods (Zeiner *et al.*, 1990).

Harbor seals are year-round residents in the Monterey Bay area and, contrary to the trend noted above for the stock as a whole, Hanan et al. (1992), as reported in Harvey (2003), report that the Monterey Bay population is increasing at an annual rate of approximately 7.7 percent. Within the Monterey Bay area, there are numerous haul out sites. Several locations in Elkhorn Slough are of particular importance, as they provide the gently-sloped, isolated, undisturbed conditions critical to harbor seals. Within the Sandholdt Road Bridge Replacement project vicinity, harbor seals are known to routinely haul out at a recently established site, located approximately 800 m (2625 ft) south of the Bridge, along the Old Salinas River. This is not a location typically used by harbor seals for pupping and nursing, and although such activities could occur at the site, it is considered a rare event. Harbor seals may use the Old Salinas River haul out during the molting season, but it is presumed that long-established alternative sites in this region (i.e. along Elkhorn Slough) are more preferable to seals during these sensitive time periods.

California Sea Lions

The geographic range of the U.S. stock of the California sea lion extends from the U.S./Mexico border north into Canada. Breeding occurs only in the Gulf of California, western Baja California, and southern California. Population estimates for this stock range from 244,000 to 237,000. The minimum population size is based on counts of all age and sex classes that were ashore at all major rookeries and haul outs during the 2001 breeding season, the number of births estimated from the pup count, and the proportion of the pups in the population. Current trends indicate that the stock as a whole has been growing at a rate of 5.4 to 6.1 percent per year (Carretta *et al.*, 2003). The Monterey Bay population is reported to be increasing at a slightly higher rate of 6 to 8 percent (Harvey, 2003).

Sea lions are the most abundant pinniped in the Monterey Bay region, with the highest numbers occurring during the spring and fall migrations (MBA, 1999). At least 12,000 California sea lions may be present within the entire Monterey Bay National Marine Sanctuary at any one time (Harvey, 2003), although only a few individuals are typically present within the Moss Landing Harbor-Sandholdt Road Bridge Project area (S. Dearn pers. comm.). Most of the sea lions within the region are males of varying age classes that arrive in early fall from their southern breeding grounds (MBA, 1999). Many individuals remain over the course of the winter until the following spring, with just a few sea lions staying through the summer. There are no breeding areas for the California sea lion located in the Monterey Bay area, and most individuals migrate to offshore breeding sites in southern California and Mexico.

Potential Effects on Marine Mammals

The impact to harbor seals and California sea lions is expected to be disturbance by the presence of workers, construction noise, and construction vessel traffic. The crane used to construct the access trestle will generate a moderate degree of noise (similar to that of a diesel truck). Pile driving will be noisier and will also cause ground vibrations. Vibratory hammers usually create less noise than pile driving, but noise will also be created by rock drills, other tools and also several of the vehicles commonly used on construction sites. The pile drivers planned for use at the Bridge have energy levels of approximately 16–24 kiloJoules (kJ). This is significantly less energy than either of the pile drivers being used on the San Francisco-Oakland Bay Bridge (SF–OBB)(see 68 FR 64595, November 14, 2003), which are 500 kJ and 1700 kJ. As a result, airborne and underwater impact zones for marine mammals (and other estuarine life) will be significantly smaller than at SF–OBB. At a distance of 50 ft (15.2 m) from the specific activity, CALTRANS believes airborne noise levels from the pile driver (and other construction equipment) are not expected to exceed 100 dBA and most sounds will be 90 dBA or lower at that distance. Previously, NMFS has determined that sound exposure levels (SELs) of 100 dBA and 90 dBA (re 20 micro-Pa^2 -sec) or greater are the levels where California sea lions (and northern elephant seals) and Pacific harbor seals, respectively, will sometimes be harassed. Pinnipeds inside those SEL isopleths at the time of pile driving and other equipment activity are presumed to be harassed, whether or not an actual behavioral disturbance occurs. NMFS does not believe that any airborne sounds from the Bridge construction site are sufficient to cause Level A harassment (injury).

In addition to airborne sounds, loud underwater sounds, such as those produced by in-water pile driving, can have detrimental effects on marine mammals, causing stress, changes in behavior, and interference with communication and predator/prey detection. The most significant detrimental effect that loud underwater noises can have on marine mammals is a temporary or permanent loss of hearing.

Based on studies, previous pile-driving projects, consultation with experts, and review of the literature, NMFS has determined that marine mammals may exhibit behavioral changes when exposed to underwater impulse sound pressure levels (SPLs) of 160 dB re 1 µPa (root-mean-squared or rms). In addition, current NMFS policy is that underwater SPLs at 190 dB re 1 micro-Pa RMS (impulse) and above could cause temporary or permanent

hearing impairment in harbor seals and sea lions and therefore, activities should be designed to ensure, to the greatest extent practicable, that pinnipeds are not exposed to SPLs greater than 190 dB rms.

While disturbances can consist of head alerts, approaches to the water, and flushes into the water, only the latter behavior is considered by NMFS to be Level B harassment. During the in-water work period (June through October), the incidental harassment of harbor seals is expected to occur on a daily basis upon initiation of the work. During the out-of-water work period, incidental harassment of harbor seals is expected to occur less frequently than what is expected for in-water construction activities. In addition, the number of seals disturbed will vary daily depending upon tidal elevations. Although California sea lions have been shown to react to pile driving noise by porpoising quickly away from other bridge construction sites (SRS Technologies, 2001), it is not known whether they will react to general construction noise and move away from the area during construction activities. However, sea lions are generally thought to be more tolerant of human activities than harbor seals and are, therefore, less likely to be affected. However, Level B harassment of California sea lions may occur on rare occasions during the in-water work and out-of-water work periods.

However, disturbance from these activities is expected to have no more than a short-term negligible impact on the affected species or stocks and will result in harassment takes of small numbers of harbor seals and sea lions. These disturbances will be reduced to the lowest level practicable by implementation of the proposed work restrictions and mitigation measures (see Mitigation).

Potential Effects on Habitat

The activities are expected to result in a temporary reduction in utilization of the Old Salinas River haulout site while work is in progress or until seals acclimate to the disturbance. This will not likely result in any permanent reduction in the number of seals at the Old Salinas River haul out. Permanent abandonment of the haul out site is not anticipated since traffic noise from the Bridge, commercial activities along the river front area, and recreational boating that currently occurs within the area have not caused long-term abandonment. In addition, proposed mitigation measures and work restrictions are designed to preclude abandonment. Therefore, as described in detail in CALTRANS (2004), other than the potential short-term abandonment by harbor seals of part or all of the Old Salinas River haul out site during Bridge construction, no impact on the habitat or food sources of marine mammals are likely from this construction project.

Proposed Mitigation

The access trestle and falsework piles will be located such that they pose no more barriers to marine mammals than do the support structures for the existing Bridge. In addition, construction barges and/or other in-water support construction equipment will be located in an area that would not restrict the movements of harbor seals or California sea lions through the work area.

To minimize underwater noise levels, the loudest pile-driving activities will be restricted to low-water periods. The loudest in-water noise levels are expected to occur during pile driving of the 6 large CISS piles with an impact hammer (driving steel piles is much louder than driving wooden piles, and an impact hammer is much louder than a vibratory hammer). As a result, the following mitigation measures will apply to pile driving: (1) For the two CISS piles in the deeper channel area, the impact hammer will not be used when water depth is more than 5 ft (1.5 m); and (2) for the other 4 CISS piles, the impact hammer will not be used when the water depth is more than 3 ft (1 m).

Several mitigation measures to reduce the potential for general noise have been implemented by CALTRANS as part of their activity. General restrictions include: piles will only be driven during daylight hours and all in-water support equipment will be located so as not to restrict marine mammal movement.

To minimize potential harassment of marine mammals to the lowest level practicable, the following mitigation measures are also required: (1) Limit all in-water construction activity (as described in the Marine Mammal and Bird Mitigation Plan (CALTRANS, 2004)) to the period from June 1 through October 31; (2) minimize vessel traffic to the greatest extent practicable in the in-water buffer zone (described in the next paragraph) when conducting in-water construction activities and to the greatest extent practicable near the haul out site; and (3) disable the special backup alarms from construction vehicles.

Underwater sound measurements have not been made for the pile driving equipment planned for use at the Bridge. Until the distance at which underwater sound levels equal 160 db and 190 dB re 1 µPa rms can be determined, CALTRANS will establish an in-water marine mammal buffer zone, delineated by a 500–ft (152–m) radius from the in-water construction activity. However, once pile driving has begun, that pile can be driven to depth without cessation notwithstanding any pinniped presence.

The in-water buffer zone will be clearly marked by highly visible stakes securely placed on the banks. Once pile-driving has started, a qualified underwater acoustic monitor will record SPLs from the pile driving to determine the distance to 160 dB re 1 µPa rms. When this radius is established, it will be used as the new buffer zone and NMFS will be notified in writing of any change. The new buffer zone will be clearly marked by highly visible stakes and the stakes delineating the initial 500–ft (152–m) buffer zone will be removed.

Each day, before pile-driving (or other loud in-water construction activity) begins, the marine mammal monitor will survey the buffer zone for marine mammals. If any marine mammals are sighted within the buffer zone, the monitor will require the contractor to delay pile-driving until the monitor determines that the marine mammal(s) has moved beyond the buffer zone, either through sighting or by waiting until enough time has elapsed (about 15 minutes) to assume that the animal has moved beyond the buffer zone.

Other in-water construction activity, such as the use of heavy equipment to place embankment earthwork and rock slope protection and to construct bridge abutments (i.e. activities not involving loud, impulsive hammering sounds) will generate noise levels equivalent to that of a diesel truck. For these activities, a 50–ft (15.2–m) radius buffer zone will be established. This buffer zone will be clearly marked by highly visible stakes securely placed into the banks.

Each day before construction begins, the monitor will search the 50–ft (15.2–m) buffer zone for marine mammals. If a marine mammal is sighted within the buffer zone, the monitor will require the contractor to delay in-water construction activities until the monitor determines that no marine mammals are present within the buffer zone.

The out-of-water construction activities include placing the embankment earthwork, constructing the abutments, constructing the superstructure and completing the roadway and embankment structural section. The equipment used for all of the above listed activities will generate

a moderate degree of noise, similar to that of a diesel truck.

Proposed Monitoring

NMFS proposes to require CALTRANS to monitor the impact of Bridge replacement construction activities on harbor seals (and California sea lions, if present) at the Old Salinas River. Monitoring will be divided into the in-water and out-of-water construction periods. Monitoring will be conducted every day during in-water construction activities and for an 8 hour period once a week during out-of-water activities, by at least one trained, NMFS-approved, biological monitor. The following data will be recorded: (1) Number of seals and sea lions on site; (2) date; (3) time; (4) tidal height; (5) number of adults, subadults, and pups; (6) number of females and males; (7) number of molting seals; and (8) details of any observed disturbances. Concurrently, the monitor(s) will record general construction activity, location, duration, and noise levels. The monitor(s) will conduct baseline observations of pinniped behavior at the Old Salinas River haul out site, once a day for a period of 5 consecutive days immediately before the initiation of construction in the area to establish pre-construction behavioral patterns. In addition, NMFS will require that, immediately following the completion of the construction of the Bridge, the monitor(s) will conduct observations of pinniped behavior at the Old Salinas River haul out, for at least 5 consecutive days for approximately 1 tidal cycle (high tide to high tide) each day.

Reporting

CALTRANS will provide weekly reports to the Southwest Regional Administrator (Regional Administrator), NMFS, including a summary of the previous week's monitoring activities and an estimate of the number of pinnipeds that may have been disturbed as a result of Bridge replacement construction activities. These reports will provide dates, time, tidal height, maximum number of harbor seals ashore, number of adults, sub-adults and pups, number of females/males, and any observed disturbances. CALTRANS will also provide a description of construction activities at the time of observation and any SPL measurements made at the haulout site. CALTRANS must submit draft interim reports to NMFS within 90 days of the completion of the 2005 in-water work phase and 2005/2006 out-of-water work phase. The draft interim reports are considered final reports unless NMFS requests modifications to those reports within 90 days of receipt. CALTRANS will also provide NMFS with a follow-up report on the post-construction monitoring activities within 18 months of project completion in order to evaluate whether haulout patterns are similar to the pre-Bridge replacement haul-out patterns at the Old Salinas River site.

Endangered Species Act (ESA)

NMFS has determined that this action will have no effect on species listed under the ESA that are under the jurisdiction of NMFS. On April 12, 2000, the U.S. Fish and Wildlife Service (USFWS) concurred with the determination of the FHWA that the proposed Bridge project was not likely to adversely affect the federally endangered goby (*Eucyclobgobius newberryi*), the brown pelican (*Pelecanus occidentalis*) and southern sea otter (*Enhydra lutris nereis*). However, issuance of an IHA to CALTRANS also constitutes an agency action subject to section 7 of the ESA. As the effects of the Bridge activities on listed species were analyzed earlier, and as the action has not changed from that considered in that informal consultation, the discussion of effects that are contained in the April 12, 2000 concurrence letter from the USFWS to the FHWA pertains also to this action. In conclusion, NMFS has determined that issuance of an IHA does not lead to any effects to listed species apart from those that were considered in the consultation on FHWA's action.

National Environmental Policy Act (NEPA)

On June 22, 2000, CALTRANS made a determination that the Bridge project is a Categorical Exclusion under NEPA and on July 24, 2000, the FHWA determined that the Bridge project meets the criteria of, and is properly classified as, a Categorical Exclusion. NMFS is reviewing the FHWA documents and will make its own NEPA determination before making a decision on the issuance of an IHA.

Preliminary Conclusions

NMFS has preliminarily determined that the Bridge replacement, as described in this document, should result, at worst, in the temporary modification in behavior of small numbers of harbor seals and, possibly, of small numbers of California sea lions. While behavioral modifications, including temporarily vacating the haulout, may be made by these species to avoid the resultant visual and acoustic disturbance, this action is expected to have a negligible impact on the affected species and stocks of pinnipeds. In addition, no take by injury and/or death is anticipated, and harassment takes will be at the lowest level practicable due to incorporation of the mitigation measures described in this document.

Proposed Authorization

NMFS proposes to issue an IHA to CALTRANS for the potential harassment of small numbers of harbor seals and California sea lions incidental to Bridge replacement construction, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. NMFS has preliminarily determined that the proposed activity would result in the harassment of only small numbers of harbor seals and possibly California sea lions and will have no more than a negligible impact on these marine mammal stocks.

Information Solicited

NMFS requests interested persons to submit comments, information, and suggestions concerning this request (see **ADDRESSES**).

Dated: August 17, 2004.

Laurie K. Allen,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 04–19347 Filed 8–23–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 062104A]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Navy Operations of Surveillance Towed Array Sensor System Low Frequency Active Sonar

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

ACTION: Notice of issuance of two Letters of Authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notification is hereby given that NMFS has issued two 1–year Letters of Authorization (LOAs) to take marine mammals by harassment incidental to the U.S. Navy's operation of Surveillance Towed Array Sensor System Low Frequency Active (SURTASS LFA) sonar operations to the Chief of Naval Operations, Department of the Navy, 2000 Navy Pentagon,

Washington, D.C., and persons operating under his authority.

DATES: Effective from August 16, 2004, through August 15, 2005.

ADDRESSES: A copy of the June 16, 2004, LOA application and the LOAs is available by writing to Steve Leathery, Chief, Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, or by telephoning the contact listed here. A copy is also available at: *http://www.nmfs.noaa.gov/prot_res/PR2/Acoustics_Program/Sound.htm#Sonar*

FOR FURTHER INFORMATION CONTACT: Kenneth Hollingshead, Office of Protected Resources, NMFS, (301) 713–2289, ext 128.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued.

Permission may be granted for periods of 5 years or less if NMFS finds that the taking will have no more than a negligible impact on the species or stock(s), and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat, and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. The regulations must include requirements pertaining to the monitoring and reporting of such taking.

Regulations governing the taking of marine mammals incidental to the U.S. Navy's operation of SURTASS LFA sonar were published on July 16, 2002 (67 FR 46712), and remain in effect until August 15, 2007. For detailed information on this action, please refer to that document. These regulations include mitigation, monitoring, and reporting requirements for the incidental taking of marine mammals by the SURTASS LFA sonar system.

On November 24, 2003, the President signed into law the National Defense Authorization Act of 2004 (NDAA) (Public Law 108–136). Included in this law were amendments to the MMPA that apply where a "military readiness activity" is concerned. Of specific importance for the SURTASS LFA sonar take authorization, the NDAA amended section 101(a)(5) of the MMPA to exempt military readiness activities from the "specified geographical region" and "small numbers" requirements. The term "military readiness activity" is defined in Public Law 107–314 (16 U.S.C. 703 note) to include all training and operations of the Armed Forces that relate to combat; and the adequate and realistic testing of military equipment, vehicles, weapons and sensors for proper operation and suitability for combat use. The term expressly does not include the routine operation of installation operating support functions, such as military offices, military exchanges, commissaries, water treatment facilities, storage facilities, schools, housing, motor pools, laundries, morale, welfare and recreation activities, shops, and mess halls; the operation of industrial activities; or the construction or demolition of facilities used for a military readiness activity.

NMFS published a proposed rule to amend its SURTASS LFA sonar final rule and regulations, to implement provisions of the NDAA (69 FR 38873; June 29, 2004). The public comment period ended on July 29, 2004. NMFS has not issued a final rule as of the date of this notice.

Summary of LOA Request

On June 16, 2004, NMFS received an application from the U.S. Navy for two LOAs, each LOA covering one ship, under the regulations issued on July 16, 2002 (67 FR 46712). The Navy requested that the LOAs become effective on August 16, 2004. This application updated the information contained in the original application for an LOA dated August 12, 1999, and the revised application submitted on April 6, 2000, for takings of marine mammals by harassment incidental to deploying the SURTASS LFA sonar system for training, testing and routine military operations. The June 16, 2004, application requested authorization to take, by harassment, small numbers of marine mammals incidental to operation of the SURTASS LFA sonar system using the *R/V Cory Chouest* and the USNS IMPECCABLE, for a period not to exceed 1 year. The application's take estimates are based on 16 nominal 9–day active sonar missions (or equivalent shorter missions) between both vessels, regardless of which vessel is performing a specific mission, not to exceed a total of 432 hours of transmission time combined for both vessels.

The specified geographic regions identified in the application are the following oceanographic provinces described in Longhurst (1998) and identified in 50 CFR 216.180(a): the Archipelagic Deep Basins Province, the North Pacific Tropical Gyre (West) Province, and the Western Pacific Warm Pool Province, all within the Pacific Trade Wind Biome; the Kuroshio Current Province within the Pacific Westerly Winds Biome; the North Pacific Epicontinental Sea Province within the Pacific Polar Biome; and the China Sea Coastal Province within the North Pacific Coastal Biome. The Navy's operating areas, as identified in the application, are portions of the provinces but do not encompass the entire area of the provinces. Due to critical naval warfare requirements, the U.S. Navy has identified the necessity for both SURTASS LFA sonar vessels to be stationed in the North Pacific Ocean during fiscal year 2005.

Summary of Activity Under the 2003–2004 LOAs

In compliance with the LOAs, on June 3, 2004, the Navy submitted the annual report on SURTASS LFA sonar operations. A summary of that report (Navy, 2004) follows.

During the period between February 16, 2003 and February 15, 2004 (the reporting period required under the 2003 LOA), the *RV Cory Chouest* operated in the western Pacific Ocean. The second SURTASS LFA sonar system onboard the USNS IMPECCABLE (T–AGOS 23) commenced sea trials in late February 2004 and is expected to be ready for full Fleet operations in early FY05. However, the LFA sonar system onboard the USNS IMPECCABLE did not operate during this reporting period.

The *RV Cory Chouest* conducted sea tests, training missions, and fleet operations during this period. All LFA sonar operations included the operation of the High-Frequency Marine Mammal Monitoring (HF/M3) sonar and complied with all mitigation requirements.

The RV Cory Chouest's sea tests consisted of continuation of testing of the LFA sonar hardware and software systems and operator training and experience. These sea tests consisted of two missions covering a period of 8.5 days with 20.5 hours of transmissions by the LFA sonar array. The training missions were a mix of basic training exercises on targets of interest and operationally oriented missions. These tests consisted of 4 missions covering a

period of 10.8 days with 25.8 hours of transmissions by the LFA sonar array.

In addition, the *RV Cory Chouest* successfully participated in two Fleet operations during this reporting period: (1) Fleet Battle Experiment Kilo (FBE Kilo), and (2) Ship/Helicopter Antisubmarine Readiness/Effectiveness Measuring (SHAREM) 146 Program.

FBE Kilo was a set of experiments designed to test and evaluate certain war-fighting initiatives in an operational environment and were part of the Navy's Sea Trial process, which aims to use technology and innovative concepts in war games, experiments, and exercises in an effort to develop the Navy of the future. In an FBE Kilo exercise conducted during this period, the *RV Cory Chouest* participated along with elements of the 7th Fleet, the *USS Carl Vinson* carrier strike group, and other U.S. and Australian Navy units.

In the area of undersea warfare and theater anti-submarine warfare, the experiment aimed to test undersea warfare planning and command and communications procedures involving local anti-submarine warfare commanders and the theater anti-submarine warfare commander. During FBE Kilo, the Navy planned and executed a series of tests of the SURTASS LFA sonar and Passive Acoustic Systems.

This mission included operation of the HF/M3 sonar and compliance to the mitigation requirements. This operational deployment consisted of a single mission covering a period of 13.2 days with 31.7 hours of transmissions by the LFA array. As a result of FBE Kilo, the Navy concluded that LFA sonar warrants ongoing fleet use and experimentation to continue the LFA program.

The SHAREM 146 Program was a major, multi-national Naval exercise consisting of a single mission covering a period of 7.5 days with 17.9 hours of transmissions by the LFA array.

In summary, during the reporting period of the Annual Report, the *R/V Cory Chouest* operated for a total of 40 days with 95.9 hours of LFA transmissions.

Summary of Monitoring Under the 2003–2004 LOAs

The percentage of marine mammal stocks estimated to be exposed to noise between 120 and 180 dB (re 1 microPa) from the LFA sonar array, both pre- and post-operational risk assessment estimates, were all substantially below the 12–percent maximum percentage authorized under the LOAs. Except for the short-finned pilot whales off Guam with a 1.85–percent risk of exposure, all other estimated exposures were below 1.0 percent, with most being below 0.50 percent (Navy, 2004). The post-operational incidental harassment risk assessments demonstrate that there were no marine mammal exposures to received levels at or above 180 dB (Navy, 2004). During the seven missions, no sightings of marine mammals were noted by the trained personnel responsible for marine animal monitoring. During 6 of the 7 missions, no marine mammal vocalizations were identified on the SURTASS passive sonar displays. While participating in FBE Kilo, long-range vocalizations from humpback, blue and fin whales were identified on the SURTASS passive sonar displays. However, none of the marine mammals identified during transmissions were located in the vicinity of the SURTASS LFA sonar operations and these animals never approached the SURTASS LFA sonar mitigation (safety) and buffer zones.

The HF/M3 sonar operated continuously during the course of the missions in accordance with the LOA. As required by the LOA, the HF/M3 sonar was "ramped up" prior to operations. During three of the missions, there were HF/M3 alerts, which were identified as possible marine mammal detections. No additional correlating data was available to further verify, identify, or clarify these detections. Because these detections met the minimum shutdown criteria (i.e., multiple detections (two or more) within the same area), the Navy's requisite protocols were followed, and LFA sonar transmissions were suspended a total of four times. Because there were no visual or passive acoustic confirmation, these contacts were most likely false alarms.

Authorization

NMFS has issued two LOAs to the U.S. Navy, authorizing the incidental harassment of marine mammals incidental to operating the two SURTASS LFA sonar systems for training, testing and routine military operations. Issuance of these two LOAs is based on findings, described in the preamble to the final rule (67 FR 46712, July 16, 2002) and supported by information contained in the Navy's required annual report on SURTASS LFA sonar, that the activities described under these two LOAs will result in the taking of no more than small numbers of marine mammals, and the total taking will have no more than a negligible impact on marine mammal stocks, and will not have an unmitigable adverse impact on the availability of the affected marine mammal stocks for subsistence uses. These LOAs also comply with the NDAA amendments to the MMPA.

These LOAs remain valid through August 15, 2005, provided the Navy remains in conformance with the conditions of the regulations and the LOAs, and the mitigation, monitoring, and reporting requirements described in 50 CFR 216.184–216.186 (67 FR 46712, July 16, 2002) and in the LOAs are undertaken.

Dated: August 13, 2004.

Phil Williams,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 04–19346 Filed 8–23–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081604C]

Advisory Committee to the U.S. Section of the International Commission for the Conservation of Atlantic Tunas (ICCAT); Fall Meeting

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

ACTION: Notice of public meeting.

SUMMARY: In preparation for the 2004 ICCAT meeting, the Advisory Committee to the U.S. Section to ICCAT will hold two fall meetings.

DATES: The open sessions will be held on September 9, 2004, from 8 a.m. to 11:15 a.m. and October 21, 2004, from 8 a.m. to 10:30 a.m. Closed sessions will be held on September 9, 2004, from 11:30 a.m. to 5:30 p.m., September 10, 2004, from 8 a.m. to 12 p.m., October 21, 2004, from 11 a.m. to 5 p.m., and October 22, 2004, from 8:30 a.m. to 12:30 p.m. Written comments should be received no later than August 27, 2004.

ADDRESSES: The meeting will be held at the Hilton Hotel, 8727 Colesville Road, Silver Spring, MD 20910. Written comments should be sent to Erika Carlsen at NOAA Fisheries/SF4, Room 13114, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Erika Carlsen, 301–713–2276.

SUPPLEMENTARY INFORMATION: The Advisory Committee to the U.S. Section to ICCAT will meet in an open session to consider information on stock status of highly migratory species and 2004 management recommendations of ICCAT's Standing Committee on Research and Statistics (SCRS). The

only opportunity for oral public comment will be during the October 21, 2004, open session. Written comments are encouraged and, if mailed, should be received by August 27, 2004 (see **ADDRESSES**). Written comment can also be submitted during the open sessions of the Advisory Committee meeting.

During its fall meetings, the Advisory Committee will hold several executive sessions, which are closed to the public. The 1st session will be on September 9, 2004, after the adjournment of the first open session. A second closed session will be held on September 10, 2004. During its second fall meeting, the Advisory Committee will again go to into executive session on October 21, 2004, immediately following the adjournment of the second open session. The final closed session will be held on October 22, 2004. The purpose of these sessions is to discuss sensitive information relating to upcoming international negotiations.

NMFS expects members of the public to conduct themselves appropriately for the duration of the meeting. At the beginning of the public comment session, an explanation of the ground rules will be provided (e.g., alcohol in the meeting room is prohibited, speakers will be called to give their comments in the order in which they registered to speak, each speaker will have an equal amount of time to speak, and speakers should not interrupt one another). The session will be structured so that all attending members of the public are able to comment, if they so choose, regardless of the degree of controversy of the subject(s). Those not respecting the ground rules will be asked to leave the meeting.

Special Accommodations

The meeting locations are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Erika Carlsen at (301) 713–2276 at least five days prior to the meeting date.

Dated: August 18, 2004.

Alan D. Risenhoover,

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

[FR Doc. 04–19349 Filed 8–23–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081804C]

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's (NPFMC) Gulf of Alaska (GOA) and Bering Sea/Aleutian Islands (BS/AI) groundfish plan teams will meet in Seattle, WA.

DATES: The meetings will be held on September 15–17, 2004. The meetings will begin at 1 p.m. on Wednesday, September 15, and continue through Friday September 17.

ADDRESSES: The meetings will be held at the Alaska Fisheries Science Center, 7600 Sand Point Way NE., Building 4, Room 1055 (BS/AI Plan Team) and Room 2076 (GOA Plan Team), Seattle, WA.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Jane DiCosimo, Diana Stram, NPFMC; telephone: 907–271–2809.

SUPPLEMENTARY INFORMATION: Principal business is to review: Draft Economic Stock Assessment Fishery Evaluation (SAFE) Report, draft Ecosystems Consideration Chapter, draft Ecosystem Assessment, draft stock assessments for target-categories, and recommend preliminary specifications for 2005/06.

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 NPFMC'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, 907–271–2809, at least 5 working days prior to the meeting date.

Dated: August 19, 2004.

Alan D. Risenhoover,

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

[FR Doc. E4–1884 Filed 8–23–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081804A]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Ad Hoc Groundfish Trawl Individual Quota Analytical Team (TIQ Analytical Team) will hold a working meeting which is open to the public.

DATES: The TIQ Analytical Team working meeting will begin Tuesday, September 7, 2004, at 9:30 a.m. and may go into the evening if necessary to complete business for the day. The meeting will reconvene at 8 a.m. and continue until business for the day is complete on Wednesday, September 8, 2004.

ADDRESSES: The meeting will be held in the Jefferson Room at the Sheraton Portland Airport Hotel, 8235 NE. Airport Way, Portland, OR 97220; telephone: 503–281–2500.

Council address: Pacific Fishery Management Council, 7700 NE. Ambassador Place, Suite 200, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Seger, Staff Officer (Economist); telephone: 503–820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the TIQ Analytical Team meeting is to review the results from the public scoping plan, review progress on analytical tasks, and discuss the organization and assignments for drafting an Environmental Impact Statement. Although non-emergency issues not contained in the TIQ Analytical Team meeting agenda may come before the group for discussion, those issues may not be the subject of formal committee action during these meetings. TIQ Analytical Team action will be restricted to those issues specifically listed in this notice and to any issues arising after publication of this notice requiring emergency action

under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the group's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at 503–820–2280 at least 5 days prior to the meeting date.

Dated: August 19, 2004.

Alan D. Risenhoover,

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

[FR Doc. E4–1885 Filed 8–23–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081804B]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council's (Council) Salmon Advisory Subpanel (SAS) will hold a work session by telephone conference, which is open to the public, to develop recommendations for the September Council meeting and the meeting in October of the Ad Hoc Channel Islands Marine Reserve Committee.

DATES: The telephone conference will be held Wednesday, September 8, 2004, from 2 p.m. to 4 p.m.

ADDRESSES: A listening station will be available at the Pacific Fishery Management Council, West Conference Room, 7700 NE. Ambassador Place, Suite 200, Portland, OR 97220–1384; telephone: (503) 820–2280.

Council address: Pacific Fishery Management Council, 7700 NE. Ambassador Place, Suite 200, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. Chuck Tracy, Salmon Management Staff Officer, Pacific Fishery Management Council; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the work session is to review information in the Council briefing book related to salmon and Pacific halibut management, to develop comments and recommendations for consideration at the September Council meeting, and to provide input to the SAS representative on the Councils Ad Hoc Channel Islands Marine Reserve Committee.

Although non-emergency issues not contained in the meeting agenda may come before the SAS for discussion, those issues may not be the subject of formal SAS action during this meeting. SAS action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the SAS's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: August 19, 2004.

Alan D. Risenhoover,

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

[FR Doc. E4–1886 Filed 8–23–04; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Denial of Commercial Availability Request under the United States - Caribbean Basin Trade Partnership Act (CBTPA)

August 18, 2004.

AGENCY: The Committee for the Implementation of Textile Agreements (CITA).

ACTION: Denial of the request alleging that certain dyed, two way stretch twill woven fabric, for use in apparel articles, cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA.

SUMMARY: On June 18, 2004 the Chairman of CITA received a petition from Pressman-Gutman Co., Inc. alleging that certain dyed, two way stretch twill woven fabric, of three ply yarns composed of 62 percent staple polyester, 33 percent staple rayon and 5 percent filament spandex, of stated specifications, classified in subheading 5515.11.0040 of the Harmonized Tariff Schedule of the United States (HTSUS), for use in apparel articles, cannot be supplied by the domestic industry in commercial quantities in a timely manner. It requested that apparel of such fabrics be eligible for preferential treatment under the CBTPA. Based on currently available information, CITA has determined that these subject fabrics can be supplied by the domestic industry in commercial quantities in a timely manner and therefore denies the request.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 213(b)(2)(A)(v)(II) of the Caribbean Basin Economic Recovery Act, as added by Section 211(a) of the CBTPA; Section 6 of Executive Order No. 13191 of January 17, 2001.

BACKGROUND:

The CBTPA provides for quota- and duty-free treatment for qualifying textile and apparel products. Such treatment is generally limited to products manufactured from yarns and fabrics formed in the United States or a beneficiary country. The CBTPA also provides for quota- and duty-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more CBTPA beneficiary countries from fabric or yarn that is not formed in the United States, if it has been determined that such fabric or yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner. In Executive Order No. 13191, the President delegated to CITA the authority to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA and directed CITA to establish procedures to ensure appropriate public participation in any such determination. On March 6, 2001, CITA published procedures that it will follow in considering requests. (66 FR 13502).

On June 18, 2004, the Chairman of CITA received a petition from Pressman-Gutman Co., Inc. alleging that certain dyed, two way stretch twill woven fabric, of three ply yarns composed of 62 percent staple polyester, 33 percent staple rayon and 5 percent filament spandex, of stated specifications, classified in HTSUS subheading 5515.11.0040, cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting quota- and duty-free treatment under the CBTPA for apparel articles that are both cut and

sewn in one or more CBTPA beneficiary countries from such fabrics.

On June 25, 2004, CITA solicited public comments regarding this petition (69 FR), particularly with respect to whether these fabrics can be supplied by the domestic industry in commercial quantities in a timely manner. On July 13, 2004, CITA and the Office of the U.S. Trade Representative offered to hold consultations with the relevant Congressional committees. We also requested the advice of the U.S. International Trade Commission and the relevant Industry Trade Advisory Committees.

Based on the information provided, including review of the petition, public comments and advice received, and our knowledge of the industry, CITA has determined that certain dyed, two way stretch twill woven fabric, described above, classified in HTSUS subheading 5515.11.0040, for use in apparel articles, can be supplied by the domestic industry in commercial quantities in a timely manner. Pressman-Gutman's request is denied.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.04–19289 Filed 8–23–04; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; Systems of Records

AGENCY: Defense Logistics Agency.

ACTION: Notice to add a system of records.

SUMMARY: The Defense Logistics Agency proposes to add a system of records notice to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on September 23, 2004, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DSS–B, 8725 John J. Kingman Roads, Stop 6220, Fort Belvoir, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 767–6183.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on August 13, 2004, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: August 18, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S330.10

SYSTEM NAME:

Alternative Workplace Program Records.

SYSTEM LOCATION:

Office of the Director, Human Resources, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Stop 6231, Fort Belvoir, VA 22060–6221, and heads of he DLA field activities. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who participate in Flexiplace, Telework, or similar alternate worksite programs operated by DLA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in the system include participant's name; position title and grade; performance evaluation; geographic and electronic work addresses and telephone numbers; alternative work site geographic and electronic addresses and telephone numbers; alternative worksite Internet service provider and service fees; alternative worksite local and long distance service providers and associated costs; government equipment descriptions and serial and barcode numbers; telework request forms, approvals/disapprovals, and agreement documents; and home safety checklists and home safety reports. The files may also contain descriptions of computer systems and software in use.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 6120, Telecommuting in Executive Agencies; 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; Public Law 106–346 § 359, Department of Transportation Appropriation Act (Telecommuting); Public Law 104–52 (amending 31 U.S.C. 1348) (Telephone Installation and Charges); and Presidential Executive Memorandum data July 26, 2000, "Employing People with Significant Disabilities to Fill Federal Agency Jobs that can be Performed at Alternative Work Sites, Including the Home."

PURPOSE(S):

Records are used by supervisors and program coordinators for managing, evaluating, and reporting DLA alternative worksite program activity.

Portions of the files may be used by Information Security offices for determining equipment and software needs; for ensuring appropriate technical safeguards are in use at alternative work sites; and for evaluating and mitigating vulnerabilities associated with connecting to DLA computer systems from remote locations. Portions of the records may also be used by telephone control offices to validate and reimburse participants for costs associated with telephone use.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DOD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Home address, home safety checklists, and home safety reports may be disclosed to the Department of Labor when an employee is injured while working at home.

The DoD "Blanket Routine Uses" set forth at the beginning of DLA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in paper and electronic formats.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

Access to the database is limited to those who require the records in the performance of their official duties. Access is further restricted by the use of passwords, which are changed periodically. Physical entry is restricted by the use of locks, guards, and

administrative procedures. Employees are periodically briefed on the consequences of improperly accessing restricted databases.

RETENTION AND DISPOSAL:

Records are destroyed 1 year after employee's participation in the program ends. Unapproved requests are destroyed 1 year after the request is rejected.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Human Resources, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Stop 6231, Fort Belvoir, VA 22060–6221; and the heads of DLA field activities. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: DSS–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221, or the Privacy Act Officer of the particular DLA activity where employed. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: DSS–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221, or the Privacy Act Officer of the particular DLA activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

Individuals must supply the name of the DLA facility or activity where employed at the time the papers were created or processed.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents and appealing initial agency determinations are contained in 32 CFR part 323 or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DSS–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

Data is supplied by participants, supervisors, and information technology officers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 04–19388 Filed 8–23–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; Systems of Records

AGENCY: Defense Logistics Agency.

ACTION: Notice to alter a system of records.

SUMMARY: The Defense Logistics Agency proposes to alter a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

The alteration consists of expanding the categories of individuals covered; expanding the category of records being maintained; and adding a routine use to permit the release of records to hospitals, medical centers, medical or dental practitioners, or similar persons for the purpose of providing initial or follow-up care or treatment.

DATES: This action will be effective without further notice on September 23, 2004, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comment to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DSS–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 767–6183.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on August 18, 2004, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: August 18, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S600.30 CAAE

SYSTEM NAME:

Safety and Health Accident Case Files (September 2, 1999, 48146).

CHANGES:

SYSTEM IDENTIFIER:

Delete 'CAAE' from entry.

SYSTEM NAME:

Delete entry and replace with 'Safety, Health, Injury, and Accident Records.'

SYSTEM LOCATION:

Delete entry and replace with 'Environment and Safety Office, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221, and the DLA field activity Safety and Health offices.' Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

Records are also maintained by DLA Security Control Centers, Emergency Support Operations Centers, and fire and rescue departments certified to provide primary response and medical aid in emergencies. Official mailing addresses are available from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DSS–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "All individuals who suffer accidents, become injured or ill, or otherwise require emergency rescue or medical assistance while on DLA facilities."

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Name, Social Security Number, age, date of birth, home addresses and telephone numbers, place of employment, photographs, and proposed or actual corrective action, where appropriate. The records may also contain medical history data, current medications, allergies, vital signs and other medical details obtained at the site of injury or illness, details of treatment administered on the scene, name of receiving medical facility, names of units responding to the scene along with their response times, and whether the patient refused treatment or transport."

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Add to entry "and DoD Instruction 6055.1, DoD Fire and Emergency Services."

* * * * *

PURPOSE(S):

Delete entry and replace with "Information is maintained to administer emergency first aid or medical treatment; to identify and correct causes of accidents; to formulate improved accident prevention programs; to document emergency fire and rescue activities; to comply with regulatory reporting requirements; to identify individuals involved in repeated accidents; and to prepare statistical reports."

* * * * *

ROUTINE USE OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add a new routine use "To hospitals, medical centers, medical or dental practitioners, or similar persons for the purpose of providing initial or follow-up care or treatment."

* * * * *

RETENTION AND DISPOSAL:

Add a new sentence to read "Documentation of fire department activities and actions pertaining to fire/emergency calls are destroyed after 7 years."

* * * * *

S600.30

SYSTEM NAME:

Safety, Health, Injury, and Accident Records.

SYSTEM LOCATION:

Environment and Safety Office, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221, and the DLA field activity Safety and Health offices. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

Records are also maintained by DLA Security Control Centers, Emergency Support Operations Centers, and fire and rescue departments certified to provide primary response and medical aid in emergencies. Official mailing addresses are available from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DDS–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who suffer accidents, become injured or ill, or otherwise require emergency rescue or medical assistance while on DLA facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number, age, date of birth, home addresses and telephone numbers, place of employment, accident reports, next of kin data, witness statements, photographs, and proposed or actual corrective action, where appropriate. The records may also contain medical history data, current medications, allergies, vital signs and other medical details obtained at the site of injury or illness, details of treatment administered on the scene, name of receiving medical facility, names of units responding to the scene along with their response times, and whether the patient refused treatment or transport.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 29 U.S.C. 651 *et seq.*, The Occupational Safety and Health Act of 1970 (OSHA); E.O. 9397 (SSN); E.O. 12196, Occupational Safety and Health Programs for Federal Employees; 29 CFR Part 1960, subpart I, Record keeping and Reporting Requirements for Federal Occupational Safety and Health Programs; and DoD Instruction 6055.1, DoD Fire and Emergency Services.

PURPOSE(S):

Information is maintained to administer emergency first aid or medical treatment; to identify and correct causes of accidents; to formulate improved accident prevention programs; to document emergency fire and rescue activities; to comply with regulatory reporting requirements; to identify individuals involved in repeated accidents; and to prepare statistical reports.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of Labor to comply with the requirement to report Federal civilian employee on-the-job accidents (29 CFR 1960).

To hospitals, medical centers, medical or dental practitioners, or similar persons for the purpose of providing initial or follow-up care or treatment.

The DoD "Blanket Routine Uses" set forth at the beginning of DLA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in paper and electronic formats.

RETRIEVABILITY:

Retrieved by name, Social Security Number, or mishap report number.

SAFEGUARDS:

Records are maintained in areas accessible only to DLA personnel who must use the records to perform their duties. The computer files are password protected with access restricted to authorized users. Records are secured in locked or guarded buildings, locked offices, or locked cabinets during non-duty hours.

RETENTION AND DISPOSAL:

Cases involving reportable mishaps are destroyed five years after case is closed. Cases involving non-reportable mishaps are destroyed three years after case is closed. Documentation of fire department activities and actions pertaining to fire/emergency calls are destroyed after 7 years.

SYSTEM MANAGER(S) AND ADDRESS:

Staff Director, Environment and Safety, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221; Commander, Defense Distribution Center, 2001 Mission Drive, New Cumberland, PA 17070–5000; Commander, Defense Supply Center Columbus, 3990 Broad Street, Columbus, OH 43216–5000; Commander, Defense Supply Center Richmond, 8000 Jefferson Davis Highway, Richmond, VA 23297–5000; and Commander, Defense Logistics Information Services, 74 Washington Avenue North, #7, Battle Creek, MI 49017–3084.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: DSS–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221, or the Privacy Act Officer of the particular DLA field activity involved. Official mailing addresses are published as an appendix to DLA's

compilation of systems of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: DSS–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221, or the Privacy Act Officer of the particular DLA field activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DSS–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

Record subject, supervisors, medical units, security offices, police, fire departments, investigating officers, or witnesses to accident.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 04–19389 Filed 8–23–04; 8:45 am]

BILLING CODE 5001–06–M

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 September 23, 2004.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Carolyn Lovett, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, 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: August 18, 2004.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of the Undersecretary

Type of Review: New.

Title: National Educational Technology Trends Study (NETTS).

Frequency: On occasion.

Affected Public: State, local, or tribal gov't., SEAs or LEAs; individuals or household; not-for-profit institutions; federal government.

Reporting and Recordkeeping Hour Burden:

Responses: 852.
Burden Hours: 595.

Abstract: The study is designed to evaluate implementation of the Enhancing Education Through Technology (EETT) program, inform program management, and enable ED to respond to Government Performance and Results Act (GPRA) reporting requirements for this program. The EETT program funds initiatives are designed to integrate technology into classrooms in ways that improve academic achievement of students. Respondents for this study will include State administrators, district administrators, principals, and teachers.

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 2561. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to (202) 245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Katrina Ingalls at her e-mail address *Katrina.Ingalls@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. 04–19284 Filed 8–23–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG04–94–000, et al.]

PSEG Generation y Energia Chile Limitada, et al.; Electric Rate and Corporate Filings

August 17, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. PSEG Generacion y Energia Chile Limitada

[Docket No. EG04–94–000]

Take notice that on August 12, 2004, PSEG Generacion y Energia Chile Limitada (PSEG Generacion) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

PSEG Generacion states that it is a company organized under the laws of Chile. PSEG Generacion states that it will be engaged, directly or indirectly through an affiliate, exclusively in owning and/or operating certain diesel generation sets with a total output of approximately 29.5 megawatts. PSEG Generacion states that it will sell electric energy at wholesale from these facilities, with retail sales, if any, to customers in Chile.

PSEG Generacion states that a copy of this application has been served on the Secretary of the Securities and Exchange Commission and the Secretary of the

New Jersey Board of Public Utilities, the only affected State Commission.

Comment Date: 5 p.m. eastern time on September 2, 2004.

2. Duke Power, a division of Duke Energy Corporation

[Docket No. ER96–110–010]

Take notice that, on August 11, 2004, Duke Power, a division of Duke Energy Corporation, (Duke Power) submitted a compliance filing pursuant to the Commission's order issued May 13, 2004 in Docket No. ER02–1406–001, *et al., Acadia Power Partners, LLC,* 107 FERC ¶ 61,168 (2004). Duke Power states that the filing is an update to the triennial market power analysis previously submitted in this proceeding and complies with the Commission's new policies on such analyses.

Duke Power states that copies of the filing were served on parties on the official service list in the above-captioned proceeding as well as its State commissions.

Comment Date: 5 p.m. eastern time on September 1, 2004.

3. Public Service Company of New Mexico

[Docket Nos. ER96–1551–007 and ER01–615–004]

Take notice that on August 11, 2004, Public Service Company of New Mexico (PNM) tendered for filing a revised generation market power study, in compliance with the Commission's order issued May 13, 2004 in Docket No. ER02–1406–001, *et al., Acadia Power Partners, LLC,* 107 FERC ¶ 61,168 (2004). PNM also submitted a notification of a change in status as a result of its proposed acquisition of TNP Enterprises Inc.

PNM states that copies of the filing were served on parties on the official service lists in the above-captioned proceedings.

Comment Date: 5 p.m. eastern time on September 1, 2004.

4. Duke Energy Morro Bay LLC,Duke Energy Moss Landing LLC,Duke Energy Oakland LLC,Duke Energy South Bay LLC

[Docket Nos. ER98–2681–007,ER98–2680–007, ER98–2682–007, ER99–1785–006]

Take notice that, on August 11, 2004, Duke Energy Morro Bay LLC, Duke Energy Moss Landing LLC, Duke Energy Oakland LLC and Duke Energy South Bay LLC (collectively, the Duke California Companies) submitted a compliance filing pursuant to the Commission's order issued May 13, 2004 in Docket No. ER02–1406–001, *et al., Acadia Power Partners, LLC,* 107 FERC ¶ 61,168 (2004). Acadia Power Partners LLC, 107 FERC ¶ 61,168 (2004).

Duke California Companies state that copies of the filing were served on parties on the official service list in the above-captioned proceeding.

Comment Date: 5 p.m. eastern time on September 1, 2004.

5. Bridgeport Energy, LLC

[Docket No. ER98–2783–006]

Take notice that on August 11, 2004, Bridgeport Energy, LLC (Bridgeport Energy) submitted a compliance filing, its triennial market power report, pursuant to the Commission's order issued June 24, 1998 in Docket No. ER98–2783–000, 83 FERC¶ 61,307 (1998).

Bridgeport Energy states that copies of the filing were served on parties on the official service list in the above-captioned proceeding.

Comment Date: 5 p.m. eastern time on September 1, 2004.

6. Consumers Energy Company

[Docket No. ER98–4421–003]

Take notice that on August 11, 2004, Consumers Energy Company (Consumers) submitted a compliance filing pursuant to the Commission's order issued May 13, 2004 in Docket No. ER02–1406–001, *et al., Acadia Power Partners, LLC,* 107 FERC ¶ 61,168 (2004). Consumers states that the filing is a revised generation market analysis.

Consumers state that a copy of the filing was served upon the Michigan Public Service Commission and those on the official service list in Docket No. ER98–4221.

Comment Date: 5 p.m. eastern time on September 1, 2004.

7. Puget Sound Energy, Inc.

[Docket No. ER99–845–004]

Take notice that on August 11, 2004, Puget Sound Energy, Inc. (Puget) filed with the Commission a revised generation market power analysis pursuant to the Commission's order issued May 13, 2004 in Docket No. ER02–1406–001, *et al., Acadia Power Partners, LLC,* 107 FERC ¶ 61,168 (2004).

Comment Date: 5 p.m. eastern time on September 1, 2004.

8. Kansas City Power and Light Company. Great Plains Power, Inc

[Docket Nos. ER99–1005–002 and ER02–725–003]

Take notice that, on August 11, 2004, Kansas City Power and Light Company, (KCPL) on behalf of itself and Great Plains Power Inc., submitted a compliance filing pursuant to the Commission's order issued May 13, 2004 in Docket No. ER02–1406–001, *et al., Acadia Power Partners, LLC,* 107 FERC ¶ 61,168 (2004). KCPL also filed updated Tariff Sheets to reflect the language of the Commission's new Market Behavior Rules adopted by the Commission on November 17, 2003 in 105 FERC ¶ 61,218 (2003).

Comment Date: 5 p.m. eastern time on September 1, 2004.

9. El Paso Electric Company

[Docket No. ER99–2416–002]

Take notice that on August 11, 2004, El Paso Electric Company (EPE) submitted a compliance filing pursuant to the Commission's order issued May 13, 2004 in Docket No. ER02–1406–001, *et al., Acadia Power Partners, LLC,* 107 FERC ¶ 61,168 (2004). EPE states that the filing is its revised market-based rate tariff three-year update filing. EPE states that copies of the filing were served upon the customers under its Tariff, the New Mexico Public Regulation Commission and the Public Utility Commission of Texas.

Comment Date: 5 p.m. eastern time on September 1, 2004.

10. Pinnacle West Capital Corporation, Arizona Public Service Company,Pinnacle West Energy Corporation, APS Energy Services Company, Inc

[Docket Nos. ER00–2268–005,ER99–4124–003, ER00–3312–004, ER99–4122–006]

Take notice that on August 11, 2004, Pinnacle West Capital Corporation (PWCC), Arizona Public Service Company, Pinnacle West Energy Corporation and APS Energy Services Company, Inc. (collectively, the Pinnacle West Companies), submitted a compliance filing pursuant to the Commission's order issued May 13, 2004 in Docket No. ER02–1406–001, *et al., Acadia Power Partners, LLC,* 107 FERC ¶ 61,168 (2004). The Pinnacle West Companies state that the filing is an amendment to their three-year market-based rate review. The Pinnacle West Companies also submitted revisions to their market-based rate tariffs to include the Market Behavior Rules adopted by the Commission in the order issued November 17, 2003 in Docket No. EL01–118.

Comment Date: 5 p.m. eastern time on September 1, 2004.

11. Volunteer Energy Services, Inc.

[Docket No. ER04–937–002]

Take notice that on August 11, 2004 Volunteer Energy Services, Inc. (VESI) submitted an amendment to its June 17, 1004 filing, as previously amended on

July 19, 2004, for acceptance of an initial rate schedule, and approval of waivers and blanket authority.

Comment Date: 5 p.m. eastern time on September 1, 2004.

12. Pythagoras Global Investors L.P.

[Docket No. ER04–1113–000]

Take notice that on August 11, 2004, Pythagoras Global Investors L.P. (Pythagoras) petitioned the Commission for acceptance of its proposed FERC Rate Schedule No. 1 for market-based rates; approval of requests for waiver of certain requirements under subparts B and C of part 35 of the regulations, and the granting of blanket approvals normally accorded sellers permitted to sell at market-based rates. Pythagoras requests an effective date of October 1, 2004.

Comment Date: 5 p.m. eastern time on September 1, 2004.

13. ISO New England Inc., *et al.*, Bangor Hydro-Electric Company, *et al.*, The Consumers of New England v. New England Power Pool

[Docket Nos. RT04–2–003, ER04–116–003, ER04–157–007 and EL01–39–003]

Take notice that on August 11, 2004, ISO New England Inc and the New England Transmission Owners (ISO) submitted a report in compliance with the Commission's March 24, 2004 in Docket No. RT04–2–000, *et al.*, 106 FERC ¶ 61,280 (2004).

ISO states that copies of the filing have been served upon all parties to this proceeding, upon all NEPOOL Participants (electronically), non-Participant Transmission Customers, and the governors and regulatory agencies of the six New England states.

Comment Date: 5 p.m. eastern time on September 1, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1882 Filed 8–23–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL04–122–000, et al.]

PPL University Park, LLC, et al.; Electric Rate and Corporate Filings

August 16, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. PPL University Park, LLC Complainant v. Commonwealth Edison Company Respondent

[Docket No. EL04–122–000]

Take notice that on August 13, 2004, PPL University Park, LLC (PPL University Park) filed a formal complaint against Commonwealth Edison Company (ComEd) pursuant to 16 U.S.C. 824e and Rule 206 of the Rules of Practice and Procedure of the Commission, 18 CFR 385.206 (2003), requesting that the Commission find certain terms and conditions of the Interconnection Agreement Between Commonwealth Edison Company and Large Scale Distributed Generation II Statutory Trust, PPL Large Scale Distributed Generation II, LLC and PPL University Park, LLC, dated July 31, 2001, to be inconsistent with Commission policy and thus unjust, unreasonable, and unduly discriminatory in failing to provide PPL University Park reimbursement for upgrades to the ComEd system paid for by PPL University Park.

PPL University Park states that it certifies that copies of the compliant were served on the contacts for ComEd as listed on the Commission's list of Corporate Officials.

Comment Date: 5 p.m. eastern time on September 2, 2004.

2. Duke Energy Marketing America, LLC

[Docket No. ER03–956–002]

Take notice that, on August 11, 2004, Duke Energy Marketing America, LLC (DEMA), formerly known as Duke Energy Power Marketing, LLC, submitted its triennial market power update.

DEMA states that copies of the filing were served on parties on the official service list in the above-captioned proceeding.

Comment Date: 5 p.m. eastern time on August 24, 2004.

3. California Independent System Operator Corporation

[Docket No. ER04–835–002]

Take notice that on August 10, 2004, the California Independent System Operator Corporation (ISO) submitted a filing in compliance with the Commission's order on Tariff Amendment No. 60, issued July 8, 2004 in Docket No. ER04–835–000, 108 FERC ¶ 61,022.

ISO states that this filing has been served upon all parties on the official service list for the captioned docket. In addition, the ISO states that it has posted this filing on the ISO Home Page.

Comment Date: 5 p.m. eastern time on August 31, 2004.

4. Lakewood Cogeneration, L.P.

[Docket No. ER04–989–001

Take notice that on August 10, 2004, Lakewood Cogeneration, L.P. (Lakewood) submitted for filing an amendment to its June 23, 2004 filing in Docket No. ER04–989–000.

Comment Date: 5 p.m. eastern time on September 1, 2004.

5. Consolidated Edison Energy Massachusetts, Inc.

[Docket No. ER04–990–001]

Take notice that on August 10, 2004, Consolidated Edison Energy Massachusetts, Inc. (CEEMI) submitted an amendment to its June 23, 2004 filing in Docket No. ER04–990–000.

Comment Date: 5 p.m. eastern time on September 1, 2004.

6. Newington Energy, L.L.C.

[Docket No. ER04–991–000]

Take notice that on August 10, 2004, Newington Energy, L.L.C. (Newington) submitted for filing an amendment to its June 23, 2004 filing in Docket No. ER04–991–000.

Comment Date: 5 p.m. eastern time on September 1, 2004.

7. PPL University Park, LLC

[Docket No. ER04–1111–000]

Take notice that on August 11, 2004, PPL University Park, LLC (PPL University Park) submitted revisions to its FERC Electric Tariff, Original Volume No. 1 (Tariff), to amend its Tariff to list each of the ancillary service markets that PJM, NYISO and ISO–NE respectively operate; to include specific reference to resale of Financial Transmission Rights and similar congestion rights in the Tariff in accordance with Commission-approved procedures; and to make certain minor non-substantive conforming edits to the Tariff.

PPL University states that copies of the filing were served upon PJM Interconnection, L.L.C., New York Independent System Operator, Inc. and ISO New England, Inc.

Comment Date: 5 p.m. eastern time on September 1, 2004.

8. New England Power Pool

[Docket Nos. OA97–237–017; ER97–1079–008; ER97–3574–007; OA97–608–007; ER97–4421–007; and ER98–499–006]

Take notice that on July 30, 2004, an informational filing was made by the New England Power Pool (NEPOOL) Participants Committee relating to rate surcharges determined in accordance with formula rates of the Restated NEPOOL Open Access Transmission Tariff. NEPOOL Participants Committee states that these materials describe the transmission charges that are in effect for the twelve month period commencing June 1, 2004 (the 2004/2005 NEPOOL Rate Year).

NEPOOL Participants Committee states that copies of these materials were sent to the NEPOOL Participants and the New England state governors and regulatory commissions.

Comment Date: 5 p.m. eastern time on August 24, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1883 Filed 8–23–04; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2004–0009; FRL–7804–8]

Agency Information Collection Activities; Submission for OMB Review and Approval: Comment Request; NSPS for Incinerators (40 CFR Part 60, Subpart E) (Renewal), ICR Number 1058.08, OMB Number 2060–0040

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act, this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on October 31, 2004. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before September 23, 2004.

ADDRESSES: Submit your comments, referencing docket ID number OECA–2004–0009, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *docket.oeca@epa.gov*, or by mail to: Environmental Protection Agency, EPA Docket Center (EPA/DC), Enforcement and Compliance Docket and Information Center, EPA West, Mail Code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Compliance Assessment and Media Programs Division (Mail Code 2223A), Office of Compliance, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; e-mail address: *williams.learia@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 25, 2004 (69 FR 29718), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID Number OECA–2004–0009, which is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, 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 Enforcement and Compliance Docket and Information Center Docket is: (202) 566–1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to 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. When 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 and OMB within 30 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, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

Title: NSPS for Incinerators (40 CFR part 60, subpart E) (Renewal).

Abstract: The New Source Performance Standards (NSPS) for Incinerators were promulgated on December 23, 1971 (36 FR 24877). These standards apply to incinerators that charge more than 45 metric tons per day rate (50 tons per day) of solid waste, for the purpose of reducing the volume of the waste after promulgation of NSPS subpart E in 1971. Solid waste is defined as refuse that is more than 50 percent municipal type wastes. This information is being collected to assure compliance with 40 CFR part 60 subpart E.

Owners or operators of the affected facilities described must make one-time-only notifications including: (1) Notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate; (2) notification of the initial performance test, including information necessary to determine the conditions of the performance test; and (3) performance test measurements and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Monitoring requirements specific to NSPS subpart E provide information on daily charging rates and hours of operation.

The control of emissions of particulate matter from municipal incinerators requires not only the installation of properly designed equipment, but also the operation and maintenance of that equipment. Certain records and reports are necessary to enable the Administrator to: (1) Identify existing, new, and reconstructed sources subject to the standards; (2) determine a source's initial capability to comply with the emission standard; and (3) ensure that the standards are being achieved. Affected facilities must also submit semiannual reports. These records and reports are required under subpart E and the General Provisions of 40 CFR part 60.

Owners or operators of affected facilities must provide certain notifications and reports on startup and initial performance. Owners or operators of affected facilities also must record certain operation and maintenance activities and retain files with this information for at least two years following the date of such measurements, maintenance reports, and records.

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 are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 51 hours per response. 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.

Respondents/Affected Entities: Owners/operators of incinerators.

Estimated Number of Respondents: 82.

Frequency of Response: Initially.

Estimated Total Annual Hour Burden: 8,393 hours.

Estimated Total Annual Costs: $735,926, which includes $0 annualized capital/startup costs, $205,000 annual O&M costs, and $530,926 annual labor costs.

Changes in the Estimates: There is a decrease of 151 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease in the hourly burden from the most recently approved ICR is due in part to a decrease in the number of sources.

Dated: August 11, 2004.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 04–19342 Filed 8–23–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7804–7]

Agency Information Collection Activities OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document announces the Office of Management and Budget's (OMB) responses to Agency clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et. seq.*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

FOR FURTHER INFORMATION CONTACT: Susan Auby (202) 566–1672, or e-mail at *auby.susan@epa.gov* and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR No. 1966.02; Reporting and Recordkeeping Requirements for National Emission Standards for Hazardous Air Pollutants for Boat Manufacturing; was approved 07/20/2004; in 40 CFR part 63, subpart VVVV;

OMB Number 2060–0546; expires 07/31/2007.

EPA ICR No. 1849.02; Landfill Methane Outreach Program; was approved 07/20/2004; OMB Number 2060–0446; expires 07/31/2007.

EPA ICR No. 1626.08; National Refrigerant Recycling and Emission Reduction Program; was approved 07/20/2004; in 40 CFR part 82, subpart F; OMB Number 2060–0256; expires 07/31/2007.

EPA ICR No. 2126.01; Longitudinal Study of Young Children's Exposures in their Homes to Selected Pesticides, Phthalates, Brominated Flame Retardants, and Perfluorinated Chemicals (A Children's Environmental Exposure Research Study); was approved 07/21/2004; OMB Number 2080–0072; expires 07/31/2007.

EPA ICR No. 1038.11; Invitation for Bids and Request for Proposals (IFBs and RFPs); was approved 07/23/2004; OMB Number 2030–0006; expires 07/31/2007.

EPA ICR No. 1550.06; Conflict of Interest, Rule #1; was approved 07/23/2004; OMB Number 2030–0023; expires 07/31/2007.

EPA ICR No. 1656.11; Information Collection Requirements for Registration and Documentation of Risk Management Plans under Section 112(r) of the Clean Air Act (Final Rule); was approved 07/23/2004; in 40 CFR part 68; OMB Number 2050–0144; expires 10/31/2005.

EPA ICR No. 1604.07; NSPS for Secondary Secondary Brass and Bronze Production, Primary Copper Smelters, Primary Zinc Smelters, Primary Lead Smelters, Primary Aluminum Reduction Plants and Ferroalloy Production Facilities; in 40 CFR part 60, subparts M, P, Q, R, S and Z; was approved 07/23/2004; OMB Number 2060–0110; expires 07/31/2007.

EPA ICR No. 1949.04; National Environmental Performance Track Program (Outreach Award, Mentoring Program Registration, and Customer Service Questionnaire); was approved 07/26/2004; OMB Number 2010–0032; expires 08/31/2006.

EPA ICR No. 1176.07; NSPS for New Residential Wood Heaters; in 40 CFR part 60, subpart AAA; was approved 07/29/2004; OMB Number 2060–0161; expires 07/31/2007.

EPA ICR No. 0616.08; Compliance Requirement for Child-Resistant Packaging; was approved 08/04/2004; OMB Number 2070–0052; expires 08/31/2007.

EPA ICR No. 1250.07; Request for Contractor Access to TSCA Confidential Business Information; was approved 08/04/2004; OMB Number 2070–0075; expires 08/31/2007.

Short Term Extensions

EPA ICR No. 0574.11; Pre-Manufacture Review Reporting and Exemption Requirements for New Chemical Substances and Significant New Use Reporting Requirements for Chemical Substances; on 07/29/2004 OMB extended the expiration date to 10/31/2004

Dated: August 11, 2004.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 04–19343 Filed 8–23–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7804–9]

Notice of Tentative Approval and Solicitation of Request for a Public Hearing for Public Water System Supervision Program Revision for the Commonwealth of Virginia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of tentative approval and Solicitation of Requests for a Public Hearing.

SUMMARY: Notice is hereby given in accordance with the provision of section 1413 of the Safe Drinking Water Act as amended, and the rules governing National Primary Drinking Water Regulations Implementation that the Commonwealth of Virginia is revising its approved Public Water System Supervision Program. Specifically, the Virginia Department of Health (VDH) has adopted the Lead and Copper Rule Minor Revisions to streamline and reduce reporting burden, a Public Notification Rule for public water systems to notify their customers when they violate EPA or Commonwealth drinking water standards, a Radionuclides Rule to establish a new maximum contaminant level for uranium and revise monitoring requirements, and a Filter Backwash Recycling Rule to institute changes to the return of recycle flows to a plant's treatment process that may otherwise compromise microbial control.

EPA has determined that these revisions are no less stringent than the corresponding Federal regulations aside from one omission in the Commonwealth's Public Notification Rule of a procedural requirement found in 40 CFR Part 141. 40 CFR 141.201(c)(2) provides that when a public water system has a violation in a portion of the distribution system that is physically or hydraulically isolated from other parts of the distribution system, the State may allow the system to limit distribution of the public notice to only persons served by that portion of the system which is out of compliance. When Virginia approves this type of limited distribution, it must give its permission in writing. However, VDH did not include the "in writing" requirement in its rules. VDH has agreed to correct this omission and add this requirement in an upcoming revision of its regulations. During the interim, it has agreed that all of its Field Offices will put such approvals in writing. Given this commitment, EPA is taking action to tentatively approve these program revisions. All interested parties are invited to submit written comments on this determination and may request a public hearing.

DATES: Comments or a request for a public hearing must be submitted by September 23, 2004. This determination shall become effective on September 23, 2004 if no timely and appropriate request for a hearing is received and the Regional Administrator does not elect on his own to hold a hearing, and if no comments are received which cause EPA to modify its tentative approval.

ADDRESSES: Comments or a request for a public hearing must be submitted to the U.S. Environmental Protection Agency Region III, 1650 Arch Street, Philadelphia, PA 19103–2029. Comments may also be submitted electronically to *Hoover.Michelle@epa.gov*. All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

- Drinking Water Branch, Water Protection Division, U.S. Environmental Protection Agency Region III, 1650 Arch Street, Philadelphia, PA 19103–2029.
- Office of Drinking Water, Virginia Department of Health, Madison Building, 6th Floor, 109 Governor Street, Room 632, Richmond, VA 23219.

FOR FURTHER INFORMATION CONTACT: Michelle Hoover, Drinking Water Branch at the Philadelphia address given above; telephone (215) 814–5258 or fax (215) 814–2318.

SUPPLEMENTARY INFORMATION: All interested parties are invited to submit written comments on this determination and may request a public hearing. All comments will be considered, and, if necessary, EPA will issue a response. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by September 23, 2004, a public hearing

will be held. A request for public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such a hearing; and (3) the signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

Dated: August 13, 2004.

Donald S. Welsh,

Regional Administrator, EPA, Region III.

[FR Doc. 04–19341 Filed 8–23–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

August 13, 2004.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction (PRA) comments should be submitted on or before September 23, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–XXXX.

Title: Enhanced 911 Emergency Calling Systems, Scope of E911 Service for CMRS.

Form No.: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit.

Number of Respondents: 662.

Estimated Time per Response: 1 hour.

Frequency of Response: One time reporting requirement.

Total Annual Burden: 662 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: The Commission has modified its rules to clarify which technologies and services must be capable of transmitting enhanced 911 information to public safety answering points (PSAPs). Among other things, resold and pre-paid mobile wireless service providers have an independent obligation to comply with our E911 rules. Telematics providers that offer a commercial wireless service may have E911 obligations and need to work with underlying licensees to ensure that E911 requirements are met.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–19358 Filed 8–23–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

August 18, 2004.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before October 25, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Les Smith, Federal Communications Commission, 445 12th Street, SW., Room 1–A804, Washington, DC 20554 or via the Internet to *Leslie.Smith@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov*.

SUPPLEMENTARY INFORMATION: *OMB Control Number:* 3060–0422.

Title: Section 68.5, Waivers (Application for Waivers of Hearing Aid Compatibility Requirements).

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 10.

Estimated Time per Response: 3 hours (avg).

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 30 hours.

Total Annual Cost: $0.

Privacy Impact Assessment: No impact(s).

Needs and Uses: Telephone manufacturers seeking a waiver of 47 CFR Section 68.5, which requires that certain telephones be hearing aid compatible, must demonstrate that compliance with the rule is technologically infeasible or too costly. Information is used by FCC staff to determine whether to grant or dismiss the request.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–19360 Filed 8–23–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

August 18, 2004

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before October 25, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Les Smith, Federal Communications Commission, Room 1-A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Leslie.Smith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0717.

Title: Billed Party Preference for InterLATA 0+ Calls, CC Docket No. 92–77, 47 CFR 64.703(a), 64.709, and 64.710.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 1,500 respondents; 1,200,000,000 responses.

Estimated Time per Response: 2 seconds to 50 hours.

Frequency of Response: On occasion and annual reporting requirements, third party disclosure.

Total Annual Burden: 699,157 hours.

Total Annual Cost: $216,000.

Privacy Impact Assessment: No impact(s).

Needs and Uses: Pursuant to 47 CFR 64.703(a), Operator Service Providers (OSPs) are required to disclose, audibly and distinctly to the consumer, at no charge and before connecting any interstate call, how to obtain rate quotations, including any applicable surcharges. 47 CFR 64.709 codifies the requirements for OSP's to file informational tariffs with the Commission. 47 CFR 64.710 requires providers of interstate operator services to inmates at correctional institutions to identify themselves, audibly and distinctly, to the party to be billed, among other things.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–19361 Filed 8–23–04; 8:45 am]

BILLING CODE 6712–10–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/.*

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 17, 2004.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Bancshares of Florida, Inc., Naples, Florida; to acquire 100 percent of the voting shares of Bank of Florida – Tampa, Tampa Bay, Florida (in organization).

Board of Governors of the Federal Reserve System, August 18, 2004.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 04–19324 Filed 8–23–04; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Meeting of the President's Council on Bioethics on September 9–10, 2004

AGENCY: The President's Council on Bioethics, HHS.

ACTION: Notice.

SUMMARY: The President's Council on Bioethics (Leon R. Kass, M.D., chairman) will hold its eighteenth meeting, at which, among other things, it will continue its discussion of the ethical implications of developments in

neuroscience. It will also continue discussing ethical issues relating to the treatment of the aged and end-of-life care. Subjects discussed at past Council meetings (though not on the agenda for the present one) include: cloning, stem cell research, embryo research, assisted reproduction, reproductive genetics, IVF, ICSI, PGD, sex selection, inheritable genetic modification, patentability of human organisms, aging retardation, lifespan-extension, and organ procurement for transplantation. Publications issued by the Council to date include: *Human Cloning and Human Dignity: An Ethical Inquiry* (July 2002); *Beyond Therapy: Biotechnology and the Pursuit of Happiness* (October 2003); *Being Human: Readings from the President's Council on Bioethics* (December 2003); *Monitoring Stem Cell Research* (January 2004), and *Reproduction and Responsibility: The Regulation of New Biotechnologies* (March 2004).

DATES: The meeting will take place Thursday, September 9, 2004, from 9 a.m. to 4:30 p.m. ET; and Friday, September 10, 2004, from 8:30 a.m. to 12:30 p.m. ET.

ADDRESSES: Hyatt Regency Crystal City, 2799 Jefferson Davis Highway, Arlington, VA 22202.

Agenda: The meeting agenda will be posted at *http://www.bioethics.gov.*

Public Comments: The Council encourages public input, either in person or in writing. At this meeting, interested members of the public may address the Council, beginning at 11:30 a.m., on Friday, September 10. Comments are limited to no more than five minutes per speaker or organization. As a courtesy, please inform Ms. Diane Gianelli, Director of Communications, in advance of your intention to make a public statement, and give your name and affiliation. To submit a written statement, mail or e-mail it to Ms. Gianelli at one of the addresses given below.

FOR FURTHER INFORMATION CONTACT: Ms. Diane Gianelli, Director of Communications, The President's Council on Bioethics, Suite 700, 1801 Pennsylvania Avenue, Washington, DC 20006. Telephone: (202) 296–4669. E-mail: *info@bioethics.gov.* Web site: *http://www.bioethics.gov.*

Dated: August 11, 2004

Yuval Levin,

Acting Executive Director, The President's Council on Bioethics.

[FR Doc. 04–19286 Filed 8–23–04; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 04274]

HIV/AIDS Surveillance in VCT/PMTCT Centers In Haiti Including Support of Annual Sero-Survey of Pregnant Women; Notice of Availability of Funds; Amendment

A notice announcing the availability of fiscal year (FY) 2004 funds for cooperative agreements for immunization projects was published in the **Federal Register** July 29, 2004, Volume 69, Number 145, pages 45322–45326. The notice is amended as follows:

Page 45323, Section II. Award Information: change Approximate Average Award to $550,000. (This amount is for the first 12-month budget period and includes direct costs.)

William P. Nichols,

Acting Director,Procurement and Grants Office,Centers for Disease Control and Prevention.

[FR Doc. 04–19309 Filed 8–23–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Reproductive Health Research

Announcement Type: New.

Funding Opportunity Number: RFA DP05–010.

Catalog of Federal Domestic Assistance Number: 93.946.

Key Dates:

Letter of Intent Deadline: September 23, 2004.

Application Deadline: November 8, 2004.

Executive Summary: The Division of Reproductive Health has four priority areas addressed by this announcement: (1) Maternal health, (2) infant health, (3) unintended and teen pregnancy prevention, and (4) women's reproductive health. This announcement seeks proposals for etiologic or interventional research that one or more of these four priority areas, especially as they relate to the problems of disparities in risk, prediction of risk, and prevention of preterm birth or unintended pregnancy. This program addresses the "Healthy People 2010" focus areas of Maternal, Infant, and Child Health and Family Planning.

I. Funding Opportunity Description

Authority: This program is authorized under Sections 301 (a) and 317 (k)(2) [42 U.S.C. 241 (a) and 247b (k)(2)] of the Public Health Service Act, as amended.

Purpose: The purpose of the program is to generate new knowledge to further the health of United States families and to eliminate disparities related to contraception, pregnancy, preterm delivery, and human reproduction.

Measurable outcomes of the program will be in alignment with one or more of the following performance goals (1) reduce maternal morbidity and mortality; or (2) identify biological and behavioral risk factors influencing prematurity; (3) increase the proportion of pregnancies that are intended; (4) reduce pregnancies among adolescent females; or (5) increase the proportion of adolescents who abstain from sexual intercourse or use condoms if currently sexually active.

Research Objectives:

(1) To gain a better understanding of the susceptibility to preterm delivery, in a public health framework, through research that explores:

- The social, behavioral, community, genetic, historical, and biologic determinants of preterm birth.
- The effect of gene variation within and between groups on the risk of preterm birth, and how the environment modifies that risk.
- The potential to predict the risk of preterm birth using combinations of social, behavioral, community, genetic, historical, and biologic determinants of preterm birth.
- To gain a better understanding of the clinical use of 17-alpha hydroxyprogesterone for the prevention of preterm delivery, evaluate barriers to its use, and develop capacity for future expanded studies of therapeutic effectiveness in the context of routine obstetrical care.

(2) To prevent unintended and teen pregnancy and to improve reproductive health among U.S. teens through innovative intervention research, non-intervention research, and research with Latino youth. Latinos are now the number one minority adolescent population and will continue to grow given the population demographics of such a young U.S. Latino population. Much of the data for Latinos are not disaggregated by ethnic subgroups or by first or subsequent generation and, therefore, preclude a discussion of differing risk factors and sexual health outcomes specific to each subgroup. Latinos have the highest teen pregnancy rate and over half of teenaged Latinos are sexually active. They are among the

least likely to use contraceptives at first intercourse. Latino youth are also disproportionately at risk for contracting sexually transmitted infections, including HIV. Such data suggest that they are an important target group for pregnancy prevention programs. However, very few programs have been evaluated that are directed specifically towards Latino teens.

(3) The principal objective of this research is the development of knowledge to support public health prevention programs and policies, including those that promote abstinence, reduce sexual risk taking, improve contraceptive use including STD prevention, and improve the delivery of reproductive health services. Proposals may include epidemiologic, behavioral, clinical, ethnographic, contextual-level, ecologic, and other research, both qualitative and quantitative. (Research that focuses primarily on school-based curriculum approaches will not be supported under this announcement.)

Activities:

Recipient activities for this program are as follows:

(1) *Preterm Delivery:*

• Using existing standardized assays, or creating new standard assays where standards do not exist, track the natural history of inflammatory biomarkers for preterm delivery through the course of pregnancy in an ethnically and racially diverse cohort of pregnant women in the United States. Biomarkers should include, but are not limited to, mediators of inflammation (cytokines, chemokines). Stored biologic specimens for women (blood, cervical swabs, vaginal swabs) and infant (cord blood, buccal swabs) dyads in this cohort will facilitate further analyses such as exploring the gene polymorphisms associated with variation in the inflammatory response. In addition to serial biological specimens, a broad range of social, behavioral, community, historical, and biologic determinants of preterm birth, and obstetrical data as well as pregnancy outcomes must be collected so that we might better understand the factors associated with an increased susceptibility to preterm delivery.

• Perform studies to explore the association between the presence of potential genetic markers for up-regulating or down-regulating inflammatory mediators and preterm birth in an ethnically and racially diverse cohort of U.S. women and their infants. The nature and design of these studies necessitate an existing cohort about which exists a broad range of social, behavioral, community, historical, and biologic determinants of preterm birth, and obstetrical data, stored biological samples for women and infant dyads, and pregnancy and neonatal outcomes.

• Describe the use of 17-alpha hydroxyprogesterone in the setting of routine clinical practice in representative sample of health care providers treating socially and racially diverse populations. Evaluate provider and patient acceptance of progesterone therapy. Examine patient compliance with weekly clinic visits and injections, according to obstetrical history, risk factors, social, behavioral, community, historical, and biologic determinants of preterm birth. Evaluate barriers to patient adherence and potential novel solutions. Develop capacity for possible future expanded assessments of therapeutic effectiveness of progesterone preparations in the context of routine clinical care.

(2) *Unintended and Teen Pregnancy Prevention:*

• *Intervention Research Objective:* To gain a better understanding of factors associated with successful programs to prevent unintended and teen pregnancy through rigorous, innovative intervention research. Potential projects could include:

○ Youth development or parent interventions which incorporate reproductive health promotion;

○ Innovative approaches to providing clinical services which incorporate behavior change interventions into clinical settings;

○ Programmatic ways to improve contraceptive practice and contraceptive adherence;

○ Intervention research tailored to the cultural circumstances of specific communities;

○ Culturally appropriate adaptations to teen pregnancy prevention programs to address the needs for culturally diverse youth;

○ Community-level interventions, such as use of radio drama or community outreach workers, to prevent unintended pregnancy and to promote reproductive health;

○ Interventions that target health care providers and youth service workers to better meet needs of clients in diverse populations.

• *Non-Intervention Research Objective:* To increase knowledge of factors associated with risk of unintended and teen pregnancy and related health consequences through innovative research. Potential projects could include:

○ Delayed initiation of first intercourse among teens or promotion of abstinence among sexually experienced teens;

○ Social and cultural forces that shape pregnancy intentions and reproductive decision-making including contraceptive use, childbearing, and HIV/STD prevention;

○ Sensitivity and appropriateness of unintended pregnancy measures in diverse and disempowered populations;

○ Determinants of incorrect or inconsistent use of contraception and factors associated with highly effective use;

○ Issues of gender and male involvement in sexual behavior and decision making, abstinence, contraceptive use, and pregnancy outcome;

○ Risks for unintended pregnancy and STDs among gay, lesbian, bisexual, transgender, and questioning youth;

○ Differences between racial and ethnic subgroups in adolescent pregnancy rates, antecedents, and associated factors;

○ Efforts to improve the measurement of pregnancy intentions and factors related to teen pregnancy and unintended pregnancy;

○ Methodological research designed to improve research approaches and public health surveillance for teen and unintended pregnancy;

○ Migration and acculturation processes as they relate to reproductive health outcomes and wantedness and intendedness of pregnancy;

○ Social and cultural influences, including gender dynamics, on abstinence, sexual risk behavior, and contraceptive use;

○ Longitudinal research projects examining sexual development, life planning, and pregnancy-related intentions and behaviors in diverse populations.

• *Latino Youth Objective:* To gain a better understanding of the risk for unintended and teen pregnancy and associated health outcomes among Latino youth through research. Potential projects could include:

○ Social and cultural determinants of pregnancy intentions, contraceptive use, and HIV/STD prevention among diverse Latino ethnic subgroups and in diverse settings, *e.g.*, along the U.S.-Mexico border;

○ Sensitivity and appropriateness of unintended pregnancy measures in Latino populations;

○ Ways that migration and acculturation interact with reproductive health behaviors and outcomes;

○ The meaning and measurement of acculturation processes as they relate to reproductive health outcomes and wantedness and intendedness of pregnancy among Latina youth;

○ Issues of gender and male involvement in sexual behavior and decision making, abstinence, contraceptive use, and pregnancy outcome;

○ Longitudinal research projects.

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring.

CDC Activities for this program are as follows:

(1) Assist in development of the research protocol by providing scientific consultation and technical assistance.

(2) Facilitate movement of the initial research protocol through CDC IRB as well as keeping CDC IRB abreast of protocol amendments and facilitating annual reviews.

(3) Assist in data analyses and interpretation and the presentation and publication of findings.

(4) Conduct site visits to recipient institution to determine the progress of the research and to monitor performance against approved project objectives.

(5) Establish agreements for sharing data and access to biological specimens.

(6) Facilitate distribution and dissemination of research findings, especially to state and local health departments and other grantees.

II. Award Information

Type of Award: Cooperative Agreement. CDC involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: Fiscal Year 2005.

Approximate Total Funding: $4,500,000.

$1,500,000 for preterm delivery.

$3,000,000 for unintended and teen pregnancy prevention. (The estimated funding amount is pending availability of FY 2005 funds, and is subject to change.)

Approximate Number of Awards: At least six total, including a minimum of one for each of the three activities under preterm delivery and one for each of the three objectives under unintended and teen pregnancy prevention activities.

Approximate Average Award: $500,000 (This amount is for the first 12-month budget period, and includes both direct and indirect costs) for the preterm delivery and teen and unintended pregnancy intervention projects; and $300,000 for the teen and unintended pregnancy non-intervention and Latino projects.

Floor of Award Range: None.

Ceiling of Award Range: $600,000 for preterm delivery and teen and unintended pregnancy intervention projects; $350,000 for non-intervention and Latino projects.

Anticipated Award Date: January 15, 2005.

Budget Period Length: 12 months.

Project Period Length: Up to five years.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by public and private nonprofit and for profit organizations and by governments and their agencies, such as:

- Public nonprofit organizations.
- Private nonprofit organizations.
- For profit organizations.
- Small, minority, women-owned businesses.
- Universities.
- Colleges.
- Research institutions.
- Hospitals.
- Community-based organizations.
- Faith-based organizations.
- Federally recognized Indian tribal governments.
- Indian tribes.
- Indian tribal organizations.
- State and local governments or their Bona Fide Agents (this includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Marianna Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau).
- Political subdivisions of States, in consultation with States.
- A Bona Fide Agent is an agency/organization identified by the state as eligible to submit an application under the state eligibility in lieu of a state application. If you are applying as a bona fide agent of a state or local government, you must provide a letter from the state or local government as documentation of your status. Place this documentation behind the first page of your application form.

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other

If you request a funding amount greater than the ceiling of the award range, your application will be considered non-responsive, and will not be entered into the review process. You will be notified that your application did not meet the submission requirements.

If your application is incomplete or non-responsive to the requirements listed in this section, it will not be entered into the review process. You will be notified that your application did not meet submission requirements.

Individuals Eligible to Become Principal Investigators: Any individual with the skills, knowledge, and resources necessary to carry out the proposed research is invited to work with their institution to develop an application for support. Individuals from underrepresented racial and ethnic groups as well as individuals with disabilities are always encouraged to apply for CDC programs.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

IV.1. Address To Request Application Package

To apply for this funding opportunity, use application form PHS 398 (OMB number 0925–0001 rev. 5/2001). Forms and instructions are available in an interactive format on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

Forms and instructions are also available in an interactive format on the National Institutes of Health (NIH) Web site at the following Internet address: *http://grants.nih.gov/grants/funding/phs398/phs398.html.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: 770–488–2700. Application forms can be mailed to you.

IV.2. Content and Form of Application Submission

Letter of Intent (LOI): Your LOI must be written in the following format:

- *Maximum number of pages:* Two.
- *Font size:* 12-point unreduced.
- Single spaced.
- *Paper size:* 8.5 by 11 inches.
- *Page margin size:* One inch.
- Printed only on one side of page.
- Written in plain language, avoid jargon.

Your LOI must contain the following information:

• Descriptive title of the proposed research.

• Name, address, E-mail address, and telephone number of the Principal Investigator.

• Names of other key personnel.

• Participating institutions.

• Number and title of this Program Announcement (PA).

Application: Follow the PHS 398 application instructions for content and formatting of your application. For further assistance with the PHS 398 application form, contact PGO–TIM staff at 770–488–2700, or contact GrantsInfo, Telephone (301) 435–0714, E-mail: *GrantsInfo@nih.gov.*

Your research plan should address activities to be conducted over the entire project period.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. Your DUNS number must be entered on line 11 of the face page of the PHS 398 application form. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711.

For more information, see the CDC Web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm.*

This PA uses just-in-time concepts. It also uses the modular budgeting as well as non-modular budgeting formats. See: *http://grants.nih.gov/grants/funding/modular/modular.htm* for additional guidance on modular budgets. Specifically, if you are submitting an application with direct costs in each year of $250,000 or less, use the modular budget format. Otherwise, follow the instructions for non-modular budget research grant applications.

Additional requirements that may require you to submit additional documentation with your application are listed in section "VI.2. Administrative and National Policy Requirements."

IV.3. Submission Dates and Times

LOI Deadline Date: September 23, 2004.

CDC requests that you send a LOI if you intend to apply for this program. Although the LOI is not required, not binding, and does not enter into the review of your subsequent application, the LOI will be used to gauge the level of interest in this program, and to allow CDC to plan the application review.

Application Deadline Date: November 8, 2004.

Explanation of Deadlines: Applications must be received in the CDC Procurement and Grants Office by 4 p.m. Eastern Time on the deadline date. If you send your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If CDC receives your application after closing due to: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carriers guarantee. If the documentation verifies a carrier problem, CDC will consider the application as having been received by the deadline.

This announcement is the definitive guide on LOI and application content, submission address, and deadline. It supersedes information provided in the application instructions. If your application does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that your application did not meet the submission requirements.

CDC will not notify you upon receipt of your application. If you have a question about the receipt of your application, first contact your courier. If you still have a question, contact the PGO–TIM staff at: 770–488–2700. Before calling, please wait two to three days after the application deadline. This will allow time for applications to be processed and logged.

IV.4. Intergovernmental Review of Applications

Your application is subject to Intergovernmental Review of Federal Programs, as governed by Executive Order (EO) 12372. This order sets up a system for state and local governmental review of proposed federal assistance applications. You should contact your state single point of contact (SPOC) as early as possible to alert the SPOC to prospective applications, and to receive instructions on your state's process. Click on the following link to get the current SPOC list: *http://www.whitehouse.gov/omb/grants/spoc.html.*

IV.5. Funding Restrictions

• None.

If you are requesting indirect costs in your budget, you must include a copy of your indirect cost rate agreement. If your indirect cost rate is a provisional rate, the agreement should be less than 12 months of age.

IV.6. Other Submission Requirements

LOI Submission Address: Submit your LOI by express mail, delivery service, fax, or E-mail to: Brenda Colley-Gilbert, Scientific Review Administrator, CDC, NCCDPHP, 4770 Buford Highway, NE.,Mail Stop K22,Atlanta, GA 30341–3717,Telephone: 770–488–6295,Fax: 770–488–7291,E-mail: *BJC4@cdc.gov.*

Application Submission Address: Submit the original and three hard copies of your application by mail or express delivery service to:Technical Information Management–RFA# DP05–010, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–3717.

At the time of submission, two additional copies of the application must be sent to: Brenda Colley-Gilbert, Scientific Review Administrator, CDC, NCCDPHP, 4770 Buford Highway, NE.,Mail Stop K22,Atlanta, GA 30341–3717,Telephone: 770–488–6295,Fax: 770–488–7291,E-mail: *BJC4@cdc.gov.*

Applications may not be submitted electronically at this time.

V. Application Review Information

V.1. Criteria

You are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the "Purpose" section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

The goals of CDC-supported research are to advance the understanding of biological systems, improve the control and prevention of disease and injury, and enhance health. In the written comments, reviewers will be asked to evaluate the application in order to judge the likelihood that the proposed research will have a substantial impact on the pursuit of these goals.

The scientific review group will address and consider each of the following criteria in assigning the application's overall score, weighting them as appropriate for each application. The application does not need to be strong in all categories to be judged likely to have major scientific impact and thus deserve a high priority score. For example, an investigator may propose to carry out important work that by its nature is not innovative, but is essential to move a field forward.

The criteria are as follows:

Significance: Does this study address an important problem? If the aims of the application are achieved, how will scientific knowledge be advanced? What will be the effect of these studies on the concepts or methods that drive this field?

Approach: Are the conceptual framework, design, methods, and analyses adequately developed, well-integrated, and appropriate to the aims of the project? Does the applicant acknowledge potential problem areas and consider alternative tactics?

○ For preterm delivery only: It is critical to the design of this project that the study population be of sufficient ethnic and racial diversity to study differences in risk factors, biomarkers, and gene-environment interactions for white and black race and Hispanic ethnicity.

Innovation: Does the project employ novel concepts, approaches or methods? Are the aims original and innovative? Does the project challenge existing paradigms or develop new methodologies or technologies?

Investigator: Is the investigator appropriately trained and well suited to carry out this work? Is the work proposed appropriate to the experience level of the principal investigator and other researchers?

○ For preterm delivery only: The principal investigator or the co-principal investigator must have a history of conducting competitively funded peer reviewed research directed at exploring the etiology or determinants of preterm delivery or directed at understanding the susceptibility of preterm delivery. The results of this research must have been published in peer reviewed journals within the last five years.

○ For preterm delivery only: In addition, the applicant's project team must include significant expertise in research on the relationships between infection and inflammation and preterm birth. For genetic studies, the team must include expertise in the area of the genetic regulation of the production of inflammatory mediators. At least one member of the project team must have laboratory experience in developing assays for inflammatory mediators (*e.g.* chemokines, cytokines), stress hormones (*e.g.* corticotrophin releasing hormone), and in the case of genetic studies, determination of polymorphism status (*e.g.* single and multiplex polymerase chain reaction).

Environment: Does the scientific environment in which the work will be done contribute to the probability of success? Do the proposed experiments take advantage of unique features of the scientific environment or employ useful collaborative arrangements? Is there evidence of institutional support?

○ For preterm delivery only: For studies involving prospectively-collected information, the applicant must document the existence of the appropriate institutional research infrastructure to carry out a large, complex project as well as the facilities to handle, store, and analyze biological samples for activities that require collection, storage, and analysis of such samples. There must be demonstrated ability to recruit women early in pregnancy and retain them throughout the course of their pregnancy.

Protection of Human Subjects from Research Risks: Does the application adequately address the requirements of Title 45 CFR part 46 for the protection of human subjects? This will not be scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.

Inclusion of Women and Minorities in Research: Does the application adequately address the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research? This includes: (1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (2) the proposed justification when representation is limited or absent; (3) a statement as to whether the design of the study is adequate to measure differences when warranted; and (4) a statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with communities and recognition of mutual benefits.

Budget: The reasonableness of the proposed budget and the requested period of support in relation to the proposed research.

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO) and for responsiveness by the National Center for Chronic Disease Prevention and Heath Promotion (NCCDPHP). Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will be notified that their application did not meet submission requirements.

Applications that are complete and responsive to the PA will be evaluated for scientific and technical merit by an appropriate peer review group or charter study section convened by NCCDPHP in accordance with the review criteria listed above. As part of the initial merit review, all applications may:

- Undergo a process in which only those applications deemed to have the highest scientific merit, generally the top half of the applications under review, will be discussed and assigned a priority score.
- Receive a written critique.
- Receive a second level review by the NCCDPHP Extramural Research Review Group.

Award Criteria: Criteria that will be used to make award decisions include:

- Scientific merit (as determined by peer review).
- Availability of funds.
- Programmatic priorities.

V.3. Anticipated Award Date

CDC expects to make awards on or about January 15, 2005.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Grant Award (NGA) from the CDC Procurement and Grants Office. The NGA shall be the only binding, authorizing document between the recipient and CDC. The NGA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR part 74 and part 92

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to this project:

- AR–1 Human Subjects Requirements.
- AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research.
- AR–4 HIV/AIDS Confidentiality Provisions.
- AR–5 HIV Program Review Panel Requirements.
- AR–6 Patient Care.
- AR–7 Executive Order 12372.
- AR–8 Public Health System Reporting Requirements.
- AR–9 Paperwork Reduction Act Requirements.

- AR–10 Smoke-Free Workplace Requirements.
- AR–11 Healthy People 2010.
- AR–12 Lobbying Restrictions.
- AR–14 Accounting System Requirements.
- AR–15 Proof of Non-Profit Status.
- AR–21 Small, Minority, and Women-Owned Business.
- AR–22 Research Integrity.
- AR–23 States and Faith-Based Organizations.
- AR–24 Health Insurance Portability and Accountability Act Requirements.
- AR–25 Release and Sharing of Data.

Additional information on these requirements can be found on the CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

VI.3. Reporting

You must provide CDC with an original, plus two hard copies of the following reports:

1. Interim progress report, (use form PHS 2590, OMB Number 0925–0001, rev. 5/2001 as posted on the CDC website) no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Budget.

e. Additional Requested Information.

f. Measures of Effectiveness.

2. Financial status report and annual progress report no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

These reports must be mailed to the Grants Management Specialist listed in the "Agency Contacts" section of this announcement.

VII. Agency Contacts

For general questions about this announcement, contact: Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2700.

For scientific/research issues, contact: Brenda Colley Gilbert, Extramural Project Officer, NCCDPHP/Deputy Associate Director for Extramural Research (DADER), 4770 Buford Highway, NE., Mail Stop K20, Atlanta, GA 30341–3717, Telephone: 770–488–6295, E-mail: *BColleyGilbert@CDC.GOV.*

For questions about peer review, contact: Brenda Colley Gilbert, Scientific Review Administrator, 4770 Buford Highway, NE., Mail Stop K20, Atlanta, GA 30341–3717, Telephone: 770–488–6295, E-mail: *BColleyGilbert@CDC.GOV.*

For financial, grants management, or budget assistance, contact: Tracey Sims, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2739, E-mail: *Tsims3@cdc.gov.*

VIII. Other Information

This and other CDC funding opportunity announcements can be found on the CDC Web site, Internet address: *http://www.cdc.gov.* Click on "Funding" then "Grants and Cooperative Agreements."

Dated: August 17, 2004.

William P. Nichols,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–19310 Filed 8–23–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003P–0548]

Determination That DECADRON–LA (Dexamethasone Acetate Injection), Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that DECADRON–LA (dexamethasone acetate injection), 8 milligrams (mg)/milliliter (mL), was not withdrawn from sale for reasons of safety or effectiveness. As a result of this determination, FDA may approve abbreviated new drug applications (ANDAs) for dexamethasone acetate injection, 8 mg/mL.

FOR FURTHER INFORMATION CONTACT: Howard P. Muller, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20855, 301–594–2041.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the "listed drug," which is typically a version of the drug that was previously approved under a new drug application (NDA). Sponsors of ANDAs do not have to repeat the extensive clinical testing otherwise necessary to gain approval of an NDA. The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the "Approved Drug Products With Therapeutic Equivalence Evaluations," which is generally known as the "Orange Book." Under FDA regulations, drugs are withdrawn from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness, or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (§ 314.162 (21 CFR 314.162)).

Under § 314.161(a)(1), the agency must determine whether a listed drug was withdrawn from sale for reasons of safety or effectiveness before an ANDA that refers to that listed drug may be approved. If the agency determines that a listed drug was withdrawn for reasons of safety or effectiveness, the drug must be removed from the list of approved drug products, and ANDAs referencing that drug may not be approved (§ 314.162).

DECADRON–LA (dexamethasone acetate injection), 8 mg/mL, is the subject of approved NDA 16–675 held by Merck. In a letter to the agency dated June 25, 2002, Merck requested that NDA 16–675 be withdrawn because the drug is no longer marketed. Merck noted that the NDA was not withdrawn because of safety reasons. On December 5, 2003, Gray Cary submitted a citizen petition (Docket No. 2003P–0548/CP1) to FDA under 21 CFR 10.30 requesting that the agency determine whether DECADRON–LA (dexamethasone acetate injection), 8 mg/mL, NDA 16–675, was withdrawn from sale for reasons of safety or effectiveness.

The agency has determined that DECADRON–LA (dexamethasone acetate injection), 8 mg/mL, was not withdrawn from sale for reasons of

safety or effectiveness. FDA has independently evaluated relevant literature and data for possible postmarketing adverse event reports associated with this drug and has found no information that would indicate this product was withdrawn for reasons of safety or effectiveness.

After considering the citizen petition and reviewing its records, FDA determines that, for the reasons outlined previously, DECADRON–LA (dexamethasone acetate injection), 8 mg/mL, was not withdrawn from sale for reasons of safety or effectiveness. Accordingly, the agency will continue to list DECADRON–LA (dexamethasone acetate injection), 8 mg/mL, in the "Discontinued Drug Product List" section of the Orange Book. The "Discontinued Drug Product List" delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to DECADRON–LA (dexamethasone acetate injection), 8 mg/mL, may be approved by the agency.

Dated: August 13, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–19287 Filed 8–23–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Circulatory System Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Circulatory System Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on September 21, 2004, from 9 a.m. to 5 p.m.

Location: Hilton Washington DC North/Gaithersburg, Salons A, B, and C, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: Geretta Wood, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8320, ext. 143, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512625. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss and make recommendations regarding clinical trial design in the evaluation of cardiopulmonary resuscitation enhancing devices/therapies for cardiac arrest patients. Background information for the topics, including the agenda and questions for the committee, will be available to the public 1 business day before the meeting on the Internet at *http://www.fda.gov/cdrh/panelmtg.html.*

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by September 7, 2004. Oral presentations from the public will be scheduled for approximately 30 minutes at the beginning of committee deliberations and for approximately 30 minutes near the end of the deliberations. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before September 7, 2004, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact AnnMarie Williams, Conference Management Staff, at 301–594–1283, ext. 113, at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 17, 2004.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 04–19288 Filed 8–23–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: (301) 496–7057; fax: (301) 402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Pichia pastoris Cloning Systems for Expressing and Secreting Proteins of Interest

James Hartley (NCI/SAIC-Frederick).DHHS Reference No. E–305–2004/0—Research Tool.

Licensing Contact: Michael Shmilovich; (301) 435–5019; *shmilovm@mail.nih.gov.*

Biological materials of a *Pichia pastoris* cloning and expression system are available for licensing for internal use. The system provides a vector for transgenically expressing proteins that are secreted through signal peptide mediation (*e.g.*, the α mating factor signal peptide). This expression system utilizes the Gateway® cloning platform from Invitrogen without interference from the Gateway® *attB1* sequence. The α mating factor signal peptide encoding sequence includes an *attB1* insertion at an XhoI site upstream from some gene of interest (*e.g.*, human interferon Hyb3). The *attB1* site does not alter the secretion or processing of the signal peptide.

Computer-Based Model for Identification and Characterization of Non-Competitive Inhibitors of Nicotinic Acetylcholine Receptors and Related Ligand-Gated Ion Channel Receptors

I. W. Wainer *et al.* (NIA). U.S. Patent Application No. 10/411,206 filed 11 Apr 2003 (DHHS Reference No. E–158–2003/0-US–01); PCT Application No. PCT/US04/10978 filed 09 Apr 2004 (DHHS Reference No. E–158–2003/1-PCT–01); U.S. Patent Application No. 10/820,809 filed 09 Apr 2004 (DHHS Reference No. E–158–2003/1-US–02).

Licensing Contact: Cristina Thalhammer-Reyero; (301) 435–4507; *thalhamc@mail.nih.gov.*

This invention relates to a computer system for generating molecular models of ligand-gated ion channels and in particular, molecular models of the inner lumen of a ligand-gated ion channel and associated binding pockets. It further relates to a computer system simulating interaction of the computer-based model of the ligand-gated channel and non-competitive inhibitor compounds for identification and characterization of non-competitive inhibitors and to inhibitor compounds so discovered. It also includes methods for treating various disorders related to ligand-gated ion channel receptor function, and provides a way to examine compounds for "off-target" activity that may cause undesirable side effects to a desired target activity or that may represent a new therapeutic activity for a known compound.

Ligand gated ion channels (LGICs) are currently very important targets for drug discovery in the pharmaceutical industry. The superfamily is separated into the nicotinic receptor superfamily (muscular and neuronal nicotinic, GABA-A and-C, glycine and 5-HT3 receptors), the excitatory amino acid superfamily (glutamate, aspartate and kainate receptors) and the ATP purinergic ligand gated ion channels. These families only differ in the number of transmembrane domains found in each subunit (nicotinic–4 transmembrane domains, excitatory amino acid receptors–3 transmembrane domains, ATP purinergic LGICs–2 transmembrane domains). In particular, the nicotinic acetylcholine receptors control the fast permeation of cations through the postsynaptic cell membrane, and are key targets in drug discovery for a number of diseases, including Alzheimer's and Parkinson's disease.

Modulators of Nuclear Hormone Receptor Activity: Novel Compounds, Diverse Applications for Infectious Diseases, Including Anthrax (*B. anthracis*)

E. M. Sternberg (NIMH), J. I. Webster (NIMH), L. H. Tonelli (NIMH), S. H. Leppla (NIAID), and M. Maoyeri (NIAID). U.S. Provisional Application No. 60/416,222 filed 04 Oct 2002 (DHHS Reference No. E–247–2002/0-US–01); U.S. Provisional Application No. 60/419,454 filed 18 Oct 2002 (DHHS Reference No. E–348–2003/0-US–01); PCT Application No. PCT/US03/31406 filed 03 Oct 2003 (DHHS Reference No. E–247–2002/1-PCT–01).

Licensing Contact: Peter Soukas; (301) 435–4646; *soukasp@mail.nih.gov.*

Technology summary and benefits: Nuclear hormones such as glucocorticoids dampen inflammatory responses, and thus provide protection to mammals against inflammatory disease and septic shock. The Anthrax lethal factor represses nuclear hormone receptor activity, and thus may contribute to the infectious agent causing even more damage to the host. This observation can be exploited to find new means of studying and interfering with the normal function of nuclear hormone receptors. Scientists at NIH have shown that under the appropriate conditions, these molecules can be used to modulate the activity of various nuclear hormone receptors. Identifying useful agents that modify these important receptors can provide relief in several human disorders such as inflammation, autoimmune disorders, arthritis, malignancies, shock and hypertension.

Long-term potential applications: This invention provides novel agents that can interfere with the action of nuclear hormone receptors. It is well known that malfunction or overdrive of these receptors can lead to a number of diseases such as enhanced inflammation; worse sequelae of infection including shock; diabetes; hypertension and steroid resistance. Hence a means of controlling or fine-tuning the activity of these receptors can be of great benefit. Current means of affecting steroid receptor activity are accompanied by undesirable side-effects. Since the conditions for which these treatments are sought tend to be chronic, there is a critical need for safer drugs that will have manageable side-effects.

Uniqueness or innovativeness of technology: The observation that the lethal factor from Anthrax has a striking effect on the activity of nuclear hormone receptors opens up new routes to controlling their activity. The means of action of this repressor is sufficiently different from known modulators of hormone receptors (*i.e.* the classical antagonists). For instance, the repression of receptor activity is non-competitive, and does not affect hormone binding or DNA binding. Also, the efficacy of nuclear hormone receptor repression by Anthrax lethal factor is sufficiently high that the pharmacological effect of this molecule is seen at vanishingly small concentrations. Taken together, these attributes may satisfy some of the golden rules of drug development such as the uniqueness or novelty of the agent's structure, a low threshold for activity, high level of sophistication and knowledge in the field of enquiry, and the leeway to further refine the molecule by rational means.

Stage of Development: In vitro studies have been completed, and a limited number of animal studies have been carried out.

Dated: August 16, 2004.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer,National Institutes of Health.

[FR Doc. 04–19300 Filed 8–23–04; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: (301) 496–7057; fax: (301) 402–0220. A signed Confidential Disclosure Agreement will

be required to receive copies of the patent applications.

Methods of Use of Nitrite Therapy

M. Gladwin (CC), R. Cannon (NHLBI), A. Schechter (NIDDK), C. Hunter (CC), R. Pluta (NINDS), E. Oldfield (NINDS), D. Kim-Shapiro (EM), R. Patel (EM), D. Lefer (EM), G. Power (EM). U.S. Patent Application 60/484,959 filed 09 July 2003 (DHHS Reference No. E–254–2003/0–US–01). U.S. Patent Application 60/511,244 filed 14 Oct 2003 (DHHS Reference No. E–254–2003/1–US–01). PCT Applications filed 09 July 2004 (DHHS Reference Nos. E–254–2003/2–PCT–01 and E–254–2003/3–PCT–01).

Licensing Contact: Susan Carson; (301) 435–5020; *carsonsu@mail.nih.gov.*

Different therapeutic classes of compounds that are able to increase blood flow and act as vasodilators have been used to treat a wide variety of disease indications including cardiovascular and respiratory diseases. Endothelium-derived factors, such as nitric oxide (NO), play a crucial role in the maintenance of vascular homeostasis, and NO-enhancing compounds have been administered alone or in combination with an approved pharmaceutical agent in order to provide an effective therapeutic treatment. Many of these therapies are very costly and there remains a strong need for an affordable treatment. Recent scientific work by the inventors provided evidence that the anion nitrite represents a circulating and tissue storage form of nitric oxide whose bioactivation is mediated by the nitrite reductase activity of deoxyhemoglobin [Nature Medicine 2003 9(12):1498–1505].

NIH scientists and their collaborators have now shown that low, physiological and non-toxic concentrations of sodium nitrite are able to increase blood flow and produce vasodilation by infused and nebulised routes of administration. Proof of concept data has been obtained in animal models for myocardial and hepatic ischemia and reperfusion injury, in a neonate lamb model for neonatal pulmonary hypertension, and in a primate model for prevention of delayed cerebral vasospasm following sub-arachnoid hemorrhage. The implications of these results point to the use of nitrite as a potential cost-effective platform therapy for a wide variety of disease indications characterized broadly by constricted blood flow or tissue hypoxia. Available for licensing are method of use claims for nitrite salt formulations directed to conditions associated with high blood pressure, decreased blood flow or hemolytic disease (E–254–2003/2) and for the treatment of specific conditions such as pulmonary hypertension, cerebral artery vasospasm and hepatic, cardiac or brain ischemia-reperfusion injury (E–254–2003/3).

Dated: August 14, 2004.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 04–19301 Filed 8–23–04; 8:45 am]

BILLING CODE 4140–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institutes; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Cancer Institute Director's Consumer Liaison Group.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Cancer Institute Director's Consumer Liaison Group, NCI's Director's Consumer Liaison Group.

Date: September 13–15, 2004.

Time: 10 a.m. to 4 p.m.

Agenda: Open; Review of DCLG Working Group; Dep Dir Panel; NCI Orientation; Cancer Survivorship, Reducing Cancer Health Disparities; Discussion with NCI Director/Next Steps; Update for NCI Director; Director's Remarks/Discussion; Recognition of Former DCLG Members; Facilitating Dialogue.

Place: Holiday Inn Select, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Nancy Caliman, Executive Secretary, Office of Liaison Activities, National Institutes of Health, National Cancer Institute, 6116 Executive Boulevard, Suite 220, MSC8324, Bethesda, MD 20892, (301) 496–0307, *calimann@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/dclg/dclg.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: August 16, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–19295 Filed 8–23–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel, Review of Nanomedicine Roadmap.

Date: September 1–2, 2004.

Time: 7:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Richard S. Fisher, PhD, Scientific Review Administrator, National Eye Institute, Division of Extramural Research, 5635 Fishers Lane, Bethesda, MD 20892, (301) 451–2020, *rfisher@nei.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: August 16, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–19292 Filed 8–23–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory General Medical Sciences Council.

The meeting will be open to the pubic as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory General Medical Sciences Council.

Date: September 9–10, 2004 8:30 a.m. to 1 p.m.

Open: September 9, 2004, 8:30 a.m. to 1 p.m.

Agenda: For the discussion of program policies and issues, opening remarks, report of the Director, NIGMS, new potential opportunities and other business of the Council.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892.

Closed: September 9, 2004, 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892.

Closed: September 10, 2004, 8:30 a.m. to adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Ann A. Hagan, PhD, Associate Director, Division of Extramural Activities, 45 Center Drive, Room 2AN24G, MSC6200, Bethesda, MD 20892–6200, (301) 594–3910, *hagana@nigms.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: *http://www.nigms.nih.gov/about/advisory_council.html,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research, 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: August 17, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–19290 Filed 8–23–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council on Aging.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Aging.

Date: September 22–23, 2004.

Closed: September 22, 2004, 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, Conference Room 6, 9000 Rockville Pike, Bethesda, MD 20892.

Open: September 23, 2004, 8 a.m. to 1:45 p.m.

Agenda: To present the Director's Report and other scientific presentations.

Place: National Institutes of Health, Building 31, Conference Room 6, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Miriam F. Kelty, PhD, Director, Office of Extramural Affairs, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C218, Bethesda, MD 20892, (301) 496–9322.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number, and, when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: *http://www.nih.gov/nia/naca/,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: August 16, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–19291 Filed 8–23–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning

individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel. Small Business Innovation Research Phase 2, Topic 202 & 203 Contracts.

Date: September 13, 2004.

Time: 4 p.m. to 5:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Aileen Schulte, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6140, MSC 9608, Bethesda, MD 20892–9608, (301) 443–1225, *aschulte@mail.nih.gov.*

(Catalogue of Federal Domestic Assistant Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS.)

Dated: August 17, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–19294 Filed 8–23–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation of other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

Date: September 21, 2004.

Open: 8:30 a.m. to 12 p.m.

Agenda: The meeting will be open to the public to discuss administrative details relating to Council business and special reports.

Place: National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892.

Closed: 1 p.m. to adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Cheryl Kitt, PhD, Director, Division of Extramural Activities, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 1 Democracy Blvd., Suite 800, Bethesda, MD 20892. (301) 594–2463. *kittcniams.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contract Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by nongovernment employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: August 17, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–19297 Filed 8–23–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, Discovery 1.

Date: September 9, 2004.

Time: 12 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Gateway Building, 7201 Wisconsin Avenue, Room 2C212, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Bita Nakhai, PhD, Scientific Review Administrator, Scientific Review Office, National Institute on Aging, Gateway Bldg., 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814 (301) 402–7701, *nakhaib@nia.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel, Biological and Functional Indicators of AD.

Date: September 21, 2004.

Time: 9 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20814 (Telephone Conference Call).

Contact Person: Jon Rolf, PhD, Health Scientist Administrator, Scientific Review Office, National Institute of Health, National Institutes on Aging, 7201 Wisconsin Avenue, Room 2C212, Bethesda, MD 20814 (301) 402–7703, *rolfj@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS.)

Dated: August 17, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–19298 Filed 8–23–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Toward a New Model of Household Projection.

Date: August 25, 2004.

Time: 11:30 a.m. to 12:30 p.m.

Agenda: To reveiw and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852. (Telephone Conference Call).

Contact Person: Carla T. Walls, PhD. Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, (301) 435–6898. *wallsc@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: August 17, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–19299 Filed 8–23–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NIA.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute on Aging, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIA.

Date: October 21–22, 2004.

Closed: October 21, 2004, 1 p.m. to 1:45 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institute of Aging, Gerontology Research Center, 5600 Nathan Shock Drive, Baltimore, MD 21224.

Open: October 21, 2004, 1:45 p.m. to 5:45 p.m.

Agenda: Committee discussion.

Place: National Institute of Aging, Gerontology Research Center, 5600 Nathan Shock Drive, Baltimore, MD 21224.

Closed: October 21, 2004, 5:45 p.m. to 6:30 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institute of Aging, Gerontology Research Center, 5600 Nathan Shock Drive, Baltimore, MD 21224.

Closed: October 22, 2004, 8 a.m. to 9 a.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institute of Aging, Gerontology Research Center, 5600 Nathan Shock Drive, Baltimore, MD 21224.

Open: October 22, 2004, 9 a.m. to 11:30 a.m.

Agenda: Committee discussion.

Place: National Institute of Aging, Gerontology Research Center, 5600 Nathan Shock Drive, Baltimore, MD 21224.

Closed: October 22, 2004, 11:30 a.m. to 12:30 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institute of Aging, Gerontology Research Center, 5600 Nathan Shock Drive, Baltimore, MD 21224.

Open: October 22, 2004, 12:30 p.m. to 4:30 p.m.

Agenda: Committee discussion.

Place: National Institute of Aging, Gerontology Research Center, 5600 Nathan Shock Drive, Baltimore, MD 21224.

Closed: October 22, 2004, 4:30 p.m. to 5:30 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institute of Aging, Gerontology Research Center, 5600 Nathan Shock Drive, Baltimore, MD 21224.

Contact Person: Dan L. Longo, MD, Scientific Director, National Institute of Aging, Gerontology Research Center, National Institutes of Health, 5600 Nathan Shock Drive, Baltimore, MD 21224–6825. 410–558–8110. *dl14q@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: August 17, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–19296 Filed 8–23–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Topics in Gut and Brain Innate Immunity.

Date: August 19, 2004.

Time: 1 p.m. to 4 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone conference call).

Contact Person: Tina McIntyre, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4202, MSC 7812, Bethesda, MD 20892, (301) 594–6375, *mcintyrt@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Elements of Innate Immunity.

Date: August 23, 2004.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone conference call)

Contact Person: Tina McIntyre, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4202, MSC 7812, Bethesda, MD 20892 (301) 594–6375, *mcintyrt@csr.nih.gov.*

- This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Acute Critical and Traumatic Brain Cell Injury.

Date: August 23, 2004.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call).

Contact Person: David L. Simpson, PhD, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5192, MSC 7846, Bethesda, MD 20892 (301) 435–1278, *simpsond@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Marine Innate Immunity.

Date: August 25, 2004.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call).

Contact Person: Tina McIntyre, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4202, MSC 7812, Bethesda, MD 20892 (301) 594–6375, *mcintyrt@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Hyperaccelerated Award/Mechanisms in Immunomodulation Trials.

Date: September 7, 2004.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone conference call).

Contact Person: Samuel C. Edwards, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4200, MSC 7812, Bethesda, MD 20892 (301) 435–1152, *edwardss@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 16, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–19293 Filed 8–23–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Prevention; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of a closed teleconference meeting of the Center for Substance Abuse Prevention (CSAP) National Advisory Council in September 2004.

The meeting will include the review, discussion and evaluation of individual grant applications. Therefore, the meeting will be closed to the public as determined by the SAMHSA Administrator, in accordance with title 5 U.S.C. 552b(c)(6) and 5 U.S.C. App. 2, Section 10(d).

Substantive program information, including a summary of the meeting and roster of Council members, may be obtained by accessing the SAMHSA/CSAP Web site, *http://www.samhsa.gov/council/CSAP/csapnac.aspx*, or from the contact listed below.

Committee Name: Center for Substance Abuse Prevention National Advisory Council.

Meeting Date: September 1, 2004.

Place: Substance Abuse and Mental Health Services Administration, CSAP Director's Conference Room, 1 Choke Cherry Road, Rockville, Maryland 20857.

Type: Closed: September 1, 2004—2 p.m. to 4 p.m.

Contact: Marlene Passero, Committee Management Specialist, 5600 Fishers Lane, Rockwall II Building, Suite 900, Rockville, Maryland 20857, telephone: (301) 443–8323; fax: (301) 443–3979, e-mail: *mpassero@samhsa.gov.*

Dated: August 19, 2004.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 04–19397 Filed 8–20–04; 3:25 pm]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1539–DR]

Florida; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Florida (FEMA–1539–DR), dated August 13, 2004, and related determinations.

DATE: Effective August 13, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 13, 2004, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Florida resulting from Tropical Storm Bonnie and Hurricane Charley beginning on August 11, 2004, and continuing is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of Florida.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas, and assistance for debris removal (Category A) and emergency protective measures (Category B) under Public Assistance and Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate subject to completion of Preliminary Damage Assessments. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and the Other Needs Assistance under Section 408 of the Stafford Act will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a),

Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Michael E. Bolch, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Florida to have been affected adversely by this declared major disaster:

Charlotte, Lee, Manatee, and Sarasota Counties for Individual Assistance.

Debris removal and emergency protective measures (Categories A and B) for all counties in the State of Florida. Direct Federal assistance is authorized.

All counties within the State of Florida are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–19331 Filed 8–23–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1539–DR]

Florida; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida (FEMA–1539–DR), dated August 13, 2004, and related determinations.

DATES: Effective August 16, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 16, 2004, the President amended the cost-sharing arrangements concerning Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act), in a letter to Michael D. Brown, Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, on behalf of the Federal Emergency Management Agency, as follows:

I have determined that the damage in certain areas of the State of Florida, resulting from Tropical Storm Bonnie and Hurricane Charley beginning on August 11, 2004, and continuing, is of sufficient severity and magnitude that special conditions are warranted regarding the cost sharing arrangements concerning Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act).

Therefore, I amend my declaration of August 13, 2004, to authorize Federal funds for debris removal (Category A) and emergency protective measures (Category B) under Public Assistance at 100 percent Federal funding of total eligible costs for the first 72 hours, and 100 percent Federal funding for direct Federal assistance. The law specifically prohibits a similar adjustment for funds provided to States for the Individuals and Households Program and the Hazard Mitigation Grant Program. These funds will continue to be reimbursed at 75 percent of the total eligible costs.

This adjustment to State and local cost sharing applies only to Public Assistance costs eligible for such adjustment under the law.

Please notify the Governor of Florida and the Federal Coordinating Officer of this amendment to my major disaster declaration.

These cost shares are effective as of the date of the President's major disaster declaration.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–19332 Filed 8–23–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1534–DR]

New York; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of New York (FEMA–1534–DR), dated August 3, 2004, and related determinations.

DATES: Effective August 13, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of New York is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 3, 2004:

All counties within the State of New York are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–19330 Filed 8–23–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Open Meeting of the Federal Interagency Committee on Emergency Medical Services (FICEMS)

AGENCY: Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice of open meeting.

SUMMARY: FEMA announces the following open meeting.

Name: Federal Interagency Committee on Emergency Medical Services (FICEMS).

Date of Meeting: September 2, 2004.

Place: Building J, Room 107, National Emergency Training Center (NETC), 16825 South Seton Avenue, Emmitsburg, Maryland 21727.

Times: 9 a.m.—FICEMS Ambulance Safety Subcommittee; 10:30 a.m.—Main FICEMS Meeting; 1 p.m.—FICEMS Counter-Terrorism Subcommittee and the Performance Technology Subcommittee.

Proposed Agenda: Review and submission for approval of previous FICEMS Committee Meeting Minutes; Ambulance Safety Subcommittee and Counter-terrorism Subcommittee report; Action Items review; presentation of member agency reports; and reports of other interested parties.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public with limited seating available on a first-come, first-served basis. See the Response and Security Procedures below.

Response Procedures: Committee Members and members of the general public who plan to attend the meeting should contact Ms. Patti Roman, on or before Tuesday, August 31, 2004, via mail at NATEK Incorporated, 21355 Ridgetop Circle, Suite 200, Dulles, Virginia 20166–8503, or by telephone at (703) 674–0190, or via facsimile at (703) 674–0195, or via e-mail at *proman@natekinc.com.* This is necessary to be able to create and provide a current roster of visitors to NETC Security per directives.

Security Procedures: Increased security controls and surveillance are in effect at the National Emergency Training Center. All visitors must have a valid picture identification card and their vehicles will be subject to search by Security personnel. All visitors will be issued a visitor pass which must be worn at all times while on campus. Please allow adequate time before the meeting to complete the security process.

Conference Call Capabilities: If you are not able to attend in person, a toll free number has been set up for teleconferencing. The toll free number will be available from 9 a.m. until 4 p.m. Members should call in around 9 a.m. The number is 1–800–320–4330. The FICEMS conference code is "430746#."

FICEMS Meeting Minutes: Minutes of the meeting will be prepared and will be available upon request 30 days after they have been approved at the next FICEMS Committee Meeting on December 2, 2004. The minutes will also be posted on the United States Fire Administration Web site at *http://www.usfa.fema.gov/fire-service/ems/ficems.shtm* within 30 days after their approval at the December 2, 2004 FICEMS Committee Meeting.

Dated: August 17, 2004.

R. David Paulison,

U.S. Fire Administrator, Director of the Preparedness Division.

[FR Doc. 04–19329 Filed 8–23–04; 8:45 am]

BILLING CODE 9110–17–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4665–N–19]

Conference Call Meeting of the Manufactured Housing Consensus Committee

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of upcoming meeting via conference call.

SUMMARY: This notice sets forth the schedule and proposed agenda of an upcoming meeting of the Manufactured Housing Consensus Committee (the Committee) to be held via telephone conference call. This meeting is open to the general public. Members of the public wishing to participate may do so by following the instructions below.

DATES: The conference call is scheduled for Wednesday, September 1, 2004, from 2 p.m. to 4 p.m. eastern time.

ADDRESSES: Information concerning the conference call can be obtained from the Department's Consensus Committee Administering Organization, the National Fire Protection Association (NFPA). Interested parties can log onto NFPA's Web site for instructions concerning how to participate, and for contact information for the conference call: *http://www.nfpa.org/ECommittee/HUDManufacturedHousing/hudmanufacturedhousing.asp.*

Alternately, interested parties may contact Jill McGovern of NFPA by phone at (617) 984–7404 (this is not a toll-free number) for conference call information.

FOR FURTHER INFORMATION CONTACT: William W. Matchneer III, Administrator, Office of Manufactured Housing Programs, Office of the Deputy Assistant Secretary for Regulatory Affairs and Manufactured Housing, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410–8000, telephone (202) 708–6409 (this is not a toll-free number). Persons who have difficulty hearing or speaking may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Notice of this meeting is provided in accordance with sections 10(a) and (b) of the Federal Advisory Committee Act (5 U.S.C. App. 2) and 41 CFR 102–3.150. The Manufactured Housing Consensus Committee is established under section 604(a)(3) of the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended, 42 U.S.C. 4503(a)(3). The Committee is charged with providing recommendations to the Secretary to adopt, revise, and interpret manufactured home construction and safety standards and procedural and enforcement regulations, and with developing and recommending proposed model installation standards to the Secretary.

The purpose of this conference call meeting is to permit the Committee, at its request, to review and make further recommendations to the Secretary regarding a proposed rule that would establish Model Manufactured Home Installation Standards pursuant to statute. The exceptional circumstances permitting less than 15 calendar days' notice of the meeting are that it is necessary to have the meeting on this date, which has been agreed to by the Committee, to permit the Committee to timely consider the proposed rule.

Tentative Agenda

A. Roll call.

B. Welcome and opening remarks.

C. Full Committee meeting and take actions on a draft of a proposed rule to establish the Model Manufactured Home Installation Standards.

D. Adjournment.

Dated: August 18, 2004.

Sean Cassidy,

General Deputy Assistant Secretary for Housing.

[FR Doc. 04–19380 Filed 8–19–04; 4:23 pm]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Proposed Safe Harbor Agreement With Chevron Hawaii Refinery at James Campbell Industrial Park for Management of the Hawaiian Stilt and Hawaiian Coot, Oahu, HI

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; receipt of application.

SUMMARY: The Chevron Hawaii Refinery (Chevron) has applied to the Fish and Wildlife Service (Service) for an enhancement of survival permit pursuant to the Endangered Species Act, (ESA). The permit application includes a proposed Safe Harbor Agreement (Agreement) between Chevron, the Service, and the Hawaii Department of Land and Natural Resources. The proposed Agreement and permit application are available for public comment.

The proposed Agreement allows for the management of nesting and foraging habitat for the endangered Hawaiian stilt (*Himantopus mexicanus knudseni*) and endangered Hawaiian coot (*Fulica alai*) at the Chevron Hawaii Refinery. The proposed duration of the Agreement and permit is 6 years.

The Service has made a preliminary determination that the proposed Agreement and permit application are eligible for categorical exclusion under the National Environmental Policy Act of 1969. We explain the basis for this determination in an Environmental Action Statement, which is also available for public review.

DATES: Written comments must be received by September 23, 2004.

ADDRESSES: Comments should be addressed to Mr. Jeff Newman, Acting Field Supervisor, U.S. Fish and Wildlife Service, P.O. Box 50088, Honolulu, Hawaii 96850; facsimile (808) 792–9580.

FOR FURTHER INFORMATION CONTACT: Ms. Arlene Pangelinan, Supervisory Fish and Wildlife Biologist (*see* **ADDRESSES**), or telephone (808) 792–9400.

SUPPLEMENTARY INFORMATION:

Background

Under a Safe Harbor Agreement, participating property owners voluntarily undertake management activities on their property to enhance, restore, or maintain habitat benefiting species listed under the ESA. Safe Harbor Agreements encourage private and other non-Federal property owners to implement conservation efforts for listed species by assuring property owners they will not be subjected to increased property use restrictions if their efforts attract listed species to their property or increase the numbers or distribution of listed species already on their property. Application requirements and issuance criteria for ESA section 10(a)(1)(A) enhancement of survival permits based on Safe Harbor Agreements are found in 50 CFR 17.22(c).

Through a Cooperative Agreement, the Service and Chevron have been working together since 1992 to manage Rowland's Pond (6 acres) for Hawaiian stilt nesting habitat, located at the Chevron Hawaii Refinery on the island of Oahu, Hawaii. In lieu of renewing the Cooperative Agreement, the Service has been working with Chevron and the Hawaii Department of Land and Natural Resources to develop a Safe Harbor Agreement to continue the management of habitat for the endangered Hawaiian stilt and, in addition, the endangered Hawaiian coot at the refinery. Under the proposed Agreement, Chevron would: (1) Maintain 6 acres of stilt nesting habitat at Rowland's Pond (*e.g.*, manage water level and vegetation) and 5 acres of stilt and coot foraging habitat at the Impounding Basin and Oxidation Ponds; (2) implement a program to control predators (*e.g.*, cats, mongoose) at Rowland's Pond, the Impounding Basin, and Oxidation Ponds during the stilt and coot breeding season; and (3) monitor stilts and coots during the breeding season. In addition, Chevron would conduct an education program for its employees and contractors about the Hawaiian stilt and Hawaiian coot at the refinery.

The conservation measures set forth in the Agreement are expected to result in the following net conservation benefits to the covered species: (1) Contribute offspring to stilt and coot populations to achieve recovery goals; and (2) increase availability of predator-reduced nesting and foraging habitat for stilts and coots.

Consistent with Safe Harbor policy and regulations, the Service proposes to issue a permit to Chevron authorizing take of Hawaiian stilt and Hawaiian coot incidental to otherwise lawful activities (*i.e.*, normal refinery operations and refinery maintenance activities) at the refinery, as long as baseline conditions are maintained and the terms of the Agreement are implemented. Proposed activities include incidental take of stilts or coots from: (1) Release of oil, other petroleum, or chemical products into Rowland's Pond from a tank rupture; (2) release of oil or other petroleum products from a tank overflow; (3) appearance of oil or petroleum products in the sediment and/or water used in the Oxidation Pond, Impounding Basin, and Rowland's Pond; (4) accidental crushing of stilt or coot chicks by vehicles; (5) accidental crushing of stilt or coot eggs during refinery maintenance; (6) flooding of nests and eggs; and (7) measures to prevent stilts from nesting or attempting to nest outside of the usual stilt nesting areas at the refinery. The proposed permit would also authorize incidental take resulting from stilt and coot monitoring activities. We expect that the maximum level of incidental take proposed to be authorized under this permit would never be realized due to Chevron Hawaii Refinery's history of successful maintenance and operation of the facility to prevent releases of oil or other petroleum products, and proposed monitoring activities during the breeding season to track stilt and coot nesting success and identify situations when management actions may need to be immediately implemented to prevent injury to the coots and stilts at the refinery.

The proposed permit would also allow Chevron to return to baseline conditions at the end of the term of the Agreement, if so desired by Chevron. However, when the proposed Agreement expires, we anticipate that any stilts or coots that were nesting at Chevron when Rowland's Pond was managed pursuant to the Agreement would not be injured or harmed, but would relocate on their own to other suitable wetlands. We anticipate that the benefits of entering into the proposed Agreement would outweigh the risks of attracting Hawaiian stilts and Hawaiian coots to an oil refinery, taking into account the potential for incidental take, the benefits resulting from implementing the proposed Agreement and minimization measures to reduce take, the fact that there has never been a catastrophic oil release since the refinery was established in 1959, and our successful management with Chevron pursuant to the Cooperative Agreement. Therefore, we anticipate that the environmental effects of the proposed Agreement and the activities it covers, which would be facilitated by the allowable incidental take, would provide a net conservation

benefit to the Hawaiian stilt and Hawaiian coot.

Public Review and Comments:

Individuals wishing copies of the permit application, the Environmental Action Statement, and/or copies of the full text of the proposed Agreement, including a map of the proposed permit area, references, and legal descriptions of the proposed permit area, should contact the Service office in Honolulu (see **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT**). Documents also will be available for public inspection, by appointment, during normal business hours at this office.

We request comments from the public on the permit application, Agreement, and Environmental Action Statement. All comments received, including names and addresses, will become part of the Administrative record and may be released to the public. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. 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, are available for public inspection in their entirety.

We will evaluate the permit application, the proposed Agreement, associated documents, and comments submitted thereon to determine whether or not the permit application meets the requirements of section 10(a) of the ESA and National Environmental Policy Act regulations. If the requirements are met, the Service will sign the proposed Agreement and issue an enhancement of survival permit under section 10(a)(1)(A) of the ESA to Chevron for the incidental take of stilts and coots as a result of otherwise lawful activities in accordance with the terms of the Agreement. The Service will not make a final decision until after the end of the 30-day comment period and will fully consider all comments received during the comment period.

The Service provides this notice pursuant to section 10(c) of the ESA and pursuant to implementing regulations for the National Environmental Policy Act (40 CFR 1506.6).

Dated: July 12, 2004.

David J. Wesley,

Deputy Regional Director, Fish and Wildlife Service, Portland, Oregon.

[FR Doc. 04–19311 Filed 8–23–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Record of Decision for the Programmatic Environmental Impact Statement/Environmental Impact Report for the San Francisco Estuary Invasive Spartina Project: Spartina Control Program

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The Fish and Wildlife Service (Service) announces availability of the Record of Decision (ROD) for the Programmatic Environmental Impact Statement/Environmental Impact Report (EIS/R) for the San Francisco Estuary Invasive Spartina Project: Spartina Control Program. The ROD is available to the public after publication of this Notice of Availability in the **Federal Register.** The Service and the California State Coastal Conservancy jointly prepared the EIS/R to address environmental impacts and benefits of alternatives for the *Spartina* Control Program and provide for early-stage public involvement, as required under the National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA). The *Spartina* Control Program's goal is to control or eradicate four species of non-native, invasive perennial cordgrass (genus *Spartina*) in the San Francisco Bay Estuary (Estuary), including the San Francisco Bay National Wildlife Refuge.

Requests for the ROD should be directed to Mr. Wayne White, Field Supervisor, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Room W–2605, Sacramento, CA 95825.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Littlefield, Sacramento Fish and Wildlife Office, (916) 414–6600.

SUPPLEMENTARY INFORMATION: The programmatic EIS/R analyzed potential effects of implementing *Spartina* control or eradication methods at a generalized, region-wide program level rather than a detailed, individual project level. The purpose of the *Spartina* Control Program is to arrest and reverse the spread of invasive, non-native cordgrasses (*S. alterniflora, S. anglica, S. densiflora,* and *S. patens*) in the Estuary to preserve and restore the ecological integrity of its intertidal habitats and estuarine ecosystem.

The Estuary supports a diverse array of native plants and animals, including several Federal and State listed species. Many nonnative species of plants and animals have been introduced into the Estuary, and some now threaten to cause fundamental changes in the structure, function, and ecological value of the Estuary's tidal lands. In recent decades, populations of nonnative cordgrasses were introduced to the Estuary and rapidly began to spread. Although valuable in their native settings, these introduced cordgrasses are highly invasive in new environments and frequently become the dominant plant species. In particular, the non-native Atlantic smooth cordgrass (*S. alterniflora*) and its hybrids, formed when this species crosses with native Pacific cordgrass (*S. foliosa*), are now threatening the ecological balance of the Estuary. In the Estuary, Atlantic smooth cordgrass is likely to choke tidal creeks, dominate newly restored tidal marshes, impair thousands of acres of existing shorebird habitat, and eventually cause extinction of the native Pacific cordgrass.

Once established in the Estuary, nonnative invasive cordgrass could rapidly spread to other estuaries along the California coast through seed dispersal on the tides. Nonnative invasive cordgrasses are spreading rapidly in the Estuary and currently dominate 500 acres of mudflats and tidal marshes on State, Federal, municipal, and private lands. The *Spartina* Control Program implemented through the selected alternative will provide for a coordinated, region-wide eradication program, consisting of a number of on-the-ground treatment techniques to address this invasion. The *Spartina* Control Program focuses on the nearly 40,000 acres of tidal marsh and 29,000 acres of tidal flats that compose the shoreline areas of Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano, Sonoma, and Sacramento counties.

The ROD provides: (1) The Service's decision; (2) the proposed action; (3) alternatives considered in the EIS/R, including the Environmentally Preferable Alternative (Selected Alternative); (4) the basis for the Service's decision; (5) associated impacts, mitigation and findings, providing all practicable means to avoid and minimize environmental harm; (6) public involvement, including an explanation of changes made between the draft and final EIS/R; (7) implementation guidelines; and (8) conclusion.

(Authority: National Environmental Policy Act (42 U.S.C. 4321 *et seq.*); Regulations for Implementing the Procedural Provisions of

the National Environmental Policy Act (40 CFR 1500–1508)).

D. Kenneth McDermond,

Acting Manager, California/Nevada Operations Office.

[FR Doc. 04–19312 Filed 8–23–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–1420–BJ–TRST] ES–052133, Group No. 166, Minnesota

Eastern States: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plat of survey; Minnesota.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM–Eastern States, Springfield, Virginia, 30 calendar days from the date of the publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153. Attn: Cadastral Survey.

SUPPLEMENTARY INFORMATION: This survey was requested by the Bureau of Indian Affairs.

The lands we surveyed are:

Fifth Principal Meridian, Minnesota

T. 145 N., R. 39 W.

The plat of survey represents the dependent resurvey of a portion of the north and west boundaries, a portion of the subdivisional lines, and the survey of the subdivision of sections 5, 6, 11, 21, 27, and 29, Township 145 North, Range 39 West, Fifth Principal Meridian, in the state of Minnesota, and was accepted July 29, 2004. We will place a copy of the plat we described in the open files. It will be available to the public as a matter of information.

If BLM receives a protest against this survey, as shown on the plat, prior to the date of the official filing, we will stay the filing pending our consideration of the protest. We will not officially file the plat until the day after we have accepted or dismissed all protests and they have become final, including decisions on appeals.

Dated: July 23, 2004.

Stephen D. Douglas,

Chief Cadastral Surveyor.

[FR Doc. 04–19344 Filed 8–23–04; 8:45 am]

BILLING CODE 4310–0J–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–522]

Certain Ink Markers and Packaging Thereof; Notice of Investigation

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on July 20, 2004, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Sanford, L.P. of Freeport, Illinois. A supplement to the complaint was filed on August 10, 2004. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain ink markers and packaging thereof by reason of infringement of U.S. Trademark Registration Nos. 807,818 and 2,721,523 and also by reason of infringement of trade dress, the threat or effect of which is to destroy or substantially injure an industry in the United States. The complaint also alleges that there exists an industry in the United States with respect to the asserted intellectual property rights.

The complainant requests that the Commission institute an investigation and, after a hearing, issue a permanent general exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint and supplement, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing-impaired individuals are advised that information on this matter can be obtained 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 at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: Anne Goalwin, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2574.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2003).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on August 16, 2004, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine:

(a) Whether there is a violation of subsection (a)(1)(C) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain ink markers and packaging thereof by reason of infringement of U.S. Trademark Registration Nos. 807,818 and 2,721,523, and whether an industry in the United States exists as required by subsection (a)(2) of section 337, or

(b) Whether there is a violation of subsection (a)(1)(A) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain ink markers and packaging thereof by reason of infringement of trade dress, the threat or effect of which is to destroy or substantially injure an industry in the United States.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Sanford, L.P., 29 East Stephenson Street, Freeport, Illinois 61032.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served: Asia Global (HK) Ltd., Room M 3FI Phase 3 Kaiser Est Hok Yuen St., HungHom, Kowloon, Hong Kong. Bangkit USA, Inc., 4280 South Maywood Avenue, Vernon, CA 90058. Cixi City Heng Bao Pen Manufacturer, No. 21 Er Fang Road, Dongqiao, Lijia Village, Zhengqi Town, China. Cixi Guancheng Yangtse River Pen Company, Guancheng Town, Cixi City, Zhejiang, China. Lineplus Corporation, Koyang-City, Rm. 524, Samsun Midas O/T 775–1, Janghang-Dong, Ilsan-Ku, South Korea.

LiShui Laike Pen Co., Ltd., Guanqiao Liancheng Town LiSHui, ZheJiang, HuaiNan 323000, China. Luxor International Pvt. Ltd., 17, Okhla

Industrial Estate, Phase—III, New Delhi 110 020, India. Midwestern Home Products, Inc., 300 Phillipi Road, Columbus, OH 43228. Mon Ami Co., Ltd., 125–20 Jungdam 1-Dong, Gangnam-Gu, Seoul, 135–957, South Korea. Ningbo Beifa Group Co., Ltd., Xiaogang Road, Ningbo, Zhejiang, China 315801. Southern States Marketing, Inc., 2066 Airport Industrial Park Drive, Marietta, GA 30062. Uchida of America Corporation, 3535 Del Amo Boulevard, Torrance, CA 90503.

(c) Anne Goalwin, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401–P, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received no later than 20 days after the date of service by the Commission of the complaint and notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: August 18, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–19304 Filed 8–23–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Appointment of Individuals To Serve as Members of Performance Review Board

AGENCY: United States International Trade Commission.

ACTION: Appointment of individuals to serve as members of Performance Review Board.

DATES: Effective August 13, 2004.

FOR FURTHER INFORMATION CONTACT: Jeri L. Buchholz, Director of Human Resources, U.S. International Trade Commission (202) 205–2651.

SUPPLEMENTARY INFORMATION: The Chairman of the U.S. International Trade Commission has appointed the following individuals to serve on the Commission's Performance Review Board (PRB):

Chairman of PRB: Vice-Chairman Deanna Tanner Okun.

Member: Commissioner Jennifer A. Hillman.

Member: Commissioner Charlotte R. Lane.

Member: Commissioner Marcia E. Miller.

Member: Commissioner Daniel Pearson.

Member: Robert G. Carpenter.

Member: Robert B. Koopman.

Member: Karen Laney-Cummings.

Member: Lynn I. Levine.

Member: Stephen A. McLaughlin.

Member: Robert A. Rogowsky.

Member: Eugene A. Rosengarden.

Member: Lyn M. Schlitt.

This notice is published in the **Federal Register** pursuant to the requirement of 5 U.S.C. 4314(c)(4). Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 205–1810.

Issued: August 18, 2004.

By order of the Chairman.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–19282 Filed 8–23–04; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—The Advanced Access Content System Founders ("AACS")

Notice is hereby given that, on July 12, 2004, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), The Advanced Access Content System Founders ("AACS") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Intel Corporation, Santa Clara, CA; Intel G.F. Inc., Santa Clara, CA; International Business Machines Corporation, Armonk, NY; Matsushita Electric Industrial Co., Ltd., Osaka, Japan; Matsushita Intellectual Property Corporation of America, Wilmington, DE; Microsoft Corporation, Redmond, WA; Sony Corporation, Tokyo, Japan; SCA IPLA Holdings, Inc., New York, NY; Toshiba Corporation, Tokyo, Japan; Toshiba America Information Systems, Inc., Irvine, CA; The Walt Disney Company, Burbank, CA; Disney Worldwide Services, Burbank, CA; Warner Brothers Technical Operations, Inc., Burbank, CA; and Warner Brothers Entertainment Inc., Burbank, CA. The nature and objectives of the venture are to develop, license and promote technology to facilitate the distribution, use and sale of next-generation digital content by offering a means to prevent unauthorized interception, copying and redistribution of the content. This technology includes but it not limited to methods for data encryption, encryption key management, encryption system renewability, electronic commerce and forensic tracing ("the Technology"). The group anticipates that this content will be valuable commercial content protected by copyrights. Through a limited liability corporation to be formed by the Founders or their affiliates, they will promote the Technology to facilitate broad adoption and enable new lines of business in affected industries.

Dorothy Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–19364 Filed 8–23–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—DVD Copy Control Association ("DVD CCA")

Notice is hereby given that, on July 23, 2004, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), DVD Copy Control Association ("DVD CCA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, BK DGTEC Co., Ltd., Seoul, Republic of Korea; Digeo Interactive, LLC, Palo Alto, CA; Eizano Nanao Corporation, Ishikawa, Japan; and Molino Networks, Inc., Santa Cruz, CA have been added as parties to this venture. Also, Aplus Technics Co., Ltd., Taipei Hsian, Taiwan; Aralion Inc., Seoul, Republic of Korea; Argus Electronics Co., Ltd., Taipei, Taiwan; Concord Disc Manufacturing Corp., Anaheim, CA; Dai Hwa Industrial Co., Ltd., Chungli, Taiwan; Escient Technologies, LLC, Indianapolis, IN; Force NO A/S, Oslo, Norway; Guangdong Kwanloon Electronics and Technology, Co., Ltd., Shenzhen, People's Republic of China; HERTZ Engineering Co., Ltd., Tokyo, Japan; Hirel Co., Ltd., Tokyo, Japan; Musion Co., Ltd., Seoul, Republic of Korea; Oak Technology, Inc., Sunnyvale, CA; Pony Canyon Enterprise Inc., Tokyo, Japan; Prochips Technology Inc., Seoul, Republic of Korea; Pro-Tech Industries Corp., Hong Kong, Hong Kong-China; Ritek Corporation, HsinChu Industrial Park, Taiwan; SANYO Laser Products, Inc., Richmond, IN; Soft4D Co., Ltd., Seoul, Republic of Korea; and WEA Manufacturing Inc., Olyphant, PA have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and DVD CCA intends to file additional written notification disclosing all changes in membership.

On April 11, 2001, DVD CCA filed its original notification pursuant to Section 6(1) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on August 3, 2001 (66 FR 40727).

The last notification was filed with the Department on July 2, 2004. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on August 6, 2004 (69 FR 47959).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–19363 Filed 8–23–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Multiservice Switching Forum

Notice is hereby given that, on July 16, 2004, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Multiservice Switching Forum ("MSF") filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Advanced Fibre Communications, Petaluma, CA; Applied Innovation, Dublin, OH; Italtel, Settimo Milanese, Italy; Mitsubishi Electric Corporation, Kamakura, Japan; Nortel Networks, Ottawa, Ontario, Canada; and Xener Systems, Seoul, Republic of Korea, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and MSF intends to file additional written notifications disclosing all changes in membership.

On January 22, 1999, MSF filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on May 26, 1999 (64 FR 28519).

The last notification was filed with the Department on April 13, 2004. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 21, 2004 (69 FR 344050).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–19362 Filed 8–23–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day notice of information collection under review: School Crime Supplement (SCS) to the National Crime Victimization Survey (NCVS).

The Department of Justice (DOJ), Office of Justice Programs (OJP) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 69, Number 88, on page 25414 on May 6, 2004, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until September 23, 2004. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information,

including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this Information Collection:

(1) Type of information collection: Extension of a currently approved collection.

(2) The title of the form/collection: School Crime Supplement to the National Crime Victimization Survey.

(3) The agency form number, if any, and the applicable component of the department sponsoring the collection: SCS–1.

(4) Affected public who will be asked or required to respond, as well as a brief abstract. Primary: Eligible individuals 12 to 18 years of age in the United States. The School Crime Supplement to the National Crime Victimization Survey collects, analyzes, publishes, and disseminates statistics on the school environment, victimization at school, exposure to fighting and bullying, availability of drugs and alcohol in the school, and attitudes related to fear of crime in schools.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply: Approximately 12,200 persons 12 to 18 years of age will complete an interview. We estimate each interview will take 10 minutes to complete.

(6) An estimate of the total public burden (in hours) associated with the collection: The total respondent burden is approximately 2,038 hours.

If additional information is required contact: Brenda E. Dyer, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: August 19, 2004.

Brenda E. Dyer,

Department Clearance Officer, Department of Justice.

[FR Doc. 04–19351 Filed 8–23–04; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection Request Submitted for Public Comment and Recommendations; Mental Health Parity

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and other federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95)(44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data is 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.

By this notice, the Department of Labor's Employee Benefits Security Administration (EBSA) is soliciting comments on the extension of the information collection requests (ICRs) included in the Interim Rules for Mental Health Parity as published in the **Federal Register** on December 22, 1997 (62 FR 66931) (Interim Rules). OMB approved the two separate ICRs under OMB control numbers 1210–0105 and 1210–0106, which expire on November 30, 2004 and October 31, 2004, respectively. Copies of the ICRs may be obtained by contacting the office shown below in the addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the addresses section on or before October 25, 2004.

ADDRESSES: Interested parties are invited to submit written comments regarding the ICRs to Mr. Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Room N–5647, Washington, DC 20210. Telephone: (202) 219–8410. Fax: (202) 219–4745 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of this notice is to seek comments from the public prior to submission to OMB for continued approval of two information collection requests included in the Interim Final Rules. The Mental Health Parity Act of 1996 (MHPA) (Pub. L. 104–204) generally requires that group health plans provide parity in the application of dollar limits between mental health and medical/surgical benefits. The statute exempts plans from this requirement if its application results in an increase in the cost under the plan or coverage by at least one percent. The Interim Final Rules under 29 CFR 2590.712(f)(3)(i) and (ii) require a group health plan electing to take advantage of this exemption to provide a written notice to participants and beneficiaries and to the federal government of the plan's election. This notice requirement is approved under OMB control number 1210–0105. To satisfy the requirements to notify the federal government, a group health plan may either send the Department a copy of the summary of material reductions in covered services or benefits sent to participants and beneficiaries, or the plan may use the Department's model notice published in the Interim Final Rule which was developed for this purpose.

The second ICR, approved under OMB control number 1210–0106, is a summary of the information used to calculate the plan's increased costs under the MHPA for purposes of electing the one percent increased cost exemption. The plan is required to make a copy of the summary available to participants and beneficiaries, on request at no charge. Under 29 CFR 2590.712(f)(2), a group health plan wishing to elect the one percent exemption must calculate their increased costs according to certain rules.

II. Desired Focus of Comments

The Department of Labor is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Department intends to request an extension of the ICRs currently approved under control numbers 1210–0105 and 1210–0106 without change to the existing information collection provisions. Although MHPA requirements will not apply to benefits for services furnished on or after December 31, 2004, in accordance with the sunset provision of section 712(f) of ERISA, in order to ensure that participants and beneficiaries are aware of their rights under group health plans, the Department intends to maintain the clearance of the notice and disclosure provisions of MHPA through December 31, 2004 and until such time as the sunset provision has taken effect without additional Congressional action that would have the effect of extending the duration of MHPA's applicability.

Type of Review: Extension of a currently approved collection.

Agency: U.S. Department of Labor, Employee Benefits Security Administration.

Title: Notice to Participants and Beneficiaries and the Federal Government of Electing One Percent Increased Cost Exemption.

OMB Number: 1210–0105.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions.

Frequency: On occasion.

Respondents: 10.

Responses: 10,000.

Estimated burden hours (Operating and Maintenance): 333.

Estimated burden costs: $5,000.

Title: Calculation and Disclosure of Documentation of Eligibility for Exemption.

OMB Number: 1210–0106.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions.

Frequency: On occasion.

Respondents: 10.

Responses: 200.

Estimated burden hours (Operating and Maintenance): 10.

Estimated burden costs: $100.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the ICRs; they will also become a matter of public record.

Dated: August 17, 2004.

Joseph Piacentini,

Acting Director, Employee Benefits Security Administration, Office of Policy and Research.

[FR Doc. 04–19314 Filed 8–23–04; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection Request Submitted for Public Comment; Proposed Extension of Information Collection; Comment Request; Form 5500 Annual Return/Report of Employee Benefit Plan

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95). 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 Employee Benefits Security Administration (EBSA) is soliciting comments on the proposed extension of Form 5500 Annual Return/Report of Employee Benefit Plan. The Internal Revenue Service (IRS) published its preclearance notice related to the Form 5500 and schedules on April 8, 2004 (69 FR 18681).

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addresses section of this notice. Although the 2004 Form 5500 is not yet available, it is not expected at this time to differ materially from the 2003 Form 5500.

Informational copies of the 2004 Form 5500 and schedules, as well as the 2004 Form 5500 and schedules when they are finalized, are available for downloading and viewing on the EFAST Web site: *http://www.efast.dol.gov.* Official hand print forms are also made available as part of the annual mailing of the Form 5500 package. The hand print forms, schedules and instructions are available by calling: 1–800–TAX–FORM (1–800–829–3676).

DATES: Written comments must be submitted to the office listed in the addresses section below on or before October 25, 2004.

ADDRESSES: Interested parties are invited to submit written comments regarding the collection of information. Send comments to Mr. Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Room N–5647, Washington, DC 20210. Telephone: (202) 693–8410 Fax: (202) 693–4745 (These are not toll-free numbers). All comments will be shared between the Agencies.

SUPPLEMENTARY INFORMATION:

I. Background

Under Titles I and IV of the Employee Retirement Income Security Act of 1974, as amended (ERISA), and the Internal Revenue Code of 1986, as amended (the Code), pension and other employee benefit plans are generally required to file annual returns/reports concerning, among other things, the financial condition and operations of the plan. These annual reporting requirements can be satisfied by filing the Form 5500 in accordance with its instructions and related regulations. The Form 5500 is the primary source of information concerning the operation, funding, assets and investments of pension and other employee benefit plans. In addition to being an important disclosure document for plan participants and beneficiaries, the Form 5500 is a compliance and research tool for EBSA, the Pension Benefit Guarantee Corporation (PBGC), and the IRS, and a source of information for other federal agencies, Congress, and the private sector for use in assessing employee benefit, tax, and economic trends and policies.

The 1999 and later Forms 5500 are available in two different formats. Both have the same data elements, but provide filers with a choice of formats for preparing the form. The formats are referred to as "machine print" and "hand print." EFAST, the computerized system for processing the Form 5500, is designed to accept only approved machine print and hand print forms. Several vendors offer EFAST-approved computer software that may be used to complete the 2000 and later versions of either the machine print or the hand print Form 5500. Filers completing the Form 5500 by hand or typewriter must use the official government-produced hand print forms because the EFAST system uses optical character recognition technology to scan the data

entries on the specially designed forms that enable the computer to read the forms.

The hand print forms can be filed only on paper by mail or approved private delivery services. The machine print forms may be printed out and filed on paper by mail or approved private delivery service, transmitted on-line via modem, or transferred to floppy disks, tapes, or CD–ROMs and filed via mail or approved private delivery service. Electronic filers submitting via modem must use approved EFAST transmitters. Additional information concerning EFAST filing requirements may be found on the EFAST website, or by calling 1–866–463–3278 Monday through Friday from 8 a.m. to 8 p.m. Eastern Time.

II. Review Focus

The Department of Labor (Department) is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Agencies intend to request an extension of the currently approved ICR. Although the 2004 Form 5500 Series is not yet available, the Agencies will not be making program changes that would be material for purposes of this ICR.

Agency: Department of Labor, Employee Benefits Security Administration.

Title: Form 5500 Annual Return/ Report of Employee Benefit Plan.

Type of Review: Extension of currently approved collections.

OMB Numbers: 1210–0110 (EBSA).

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions.

Form Number: Form 5500.

Total Respondents: 863,682.

Total Responses: 863,682.

Frequency of Response: Annually.

Estimated Burden Hours: 1,847,163 for EBSA.

Estimated Burden Cost (Operating and Maintenance): $546,789,000 for EBSA.

Comments submitted in response to this request 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: August 18, 2004.

Joseph Piacentini,

Acting Director, Office of Policy and Research, Employee Benefits Security Administration.

[FR Doc. 04–19315 Filed 8–23–04; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,403]

Broyhill Furniture, Lenoir Chair #3, Lenoir, NC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 9, 2004 in response to a petition filed on behalf of workers at Broyhill Furniture, Lenoir Chair #3, Lenoir, North Carolina.

The petitioning group of workers is covered by an earlier petition instituted on August 4, 2004 (TA–W–55,373) that is the subject of an ongoing investigation for which a determination has not yet been issued. Further investigation in this case would duplicate efforts and serve no purpose; therefore the investigation under this petition has been terminated.

Signed at Washington, DC, this 12th day of August 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–19318 Filed 8–23–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than September 3, 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 September 3, 2004.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 12th day of August 2004.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[TAA Petitions Instituted Between 7/26/04 and 8/6/04]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
55313	C and D Die Casting (CA)	Chatsworth, CA	07/26/04	07/19/04
55314	ABB, Inc. (Comp)	Columbus, OH	07/26/04	07/26/04
55315	Manpower Temporary (Wkrs)	Marion, NC	07/26/04	07/14/04
55316	West Point Stevens (Wkrs)	Greenville, AL	07/26/04	07/19/04
55317	Saber Industries, Inc. (Comp)	Nashville, TN	07/26/04	07/20/04
55318	Allegheny Ludlum (Comp)	Natrona Hgts., PA	07/26/04	07/06/04
55319	Danaher Motion-Thomson Bay City Mfg. Facility (UAW).	Bay City, MI	07/26/04	07/19/04
55320	C. M. Holtzinger Fruit Co. (Comp)	Prosser, WA	07/26/04	07/22/04
55321	Dynea USA, Inc. (Wkrs)	Eugene, OR	07/27/04	07/27/04
55322	Coats American, Inc. (Comp)	Marble, NC	07/27/04	07/27/04
55323	Smith-Victor Corporation (Wkrs)	Griffith, IN	07/27/04	07/23/04
55324	Mandell Industries, Inc. (UNITE)	Oceanside, NY	07/27/04	07/26/04
55325	GLP Acquisitions, LLC (Comp)	Salem, MI	07/27/04	07/12/04
55326	Sumitomo Electric Wiring Systems, Inc. (Comp).	Scottsville, KY	07/28/04	07/27/04
55327	Loger Industries (Wkrs)	Lake City, PA	07/28/04	07/27/04
55328	Pacific Prime Wood Products (Wkrs)	Redmond, OR	07/28/04	07/26/04
55329	Westchester Lace (UNITE)	N. Bergen, NJ	07/28/04	07/21/04
55330	Jockey International (Comp)	Maysville, KY	07/28/04	07/26/04
55331	Burlington Industries, LLC (Comp)	Burlington, NC	07/30/04	07/29/04
55332	Holman Cooking Equipment (Comp)	Saco, ME	07/30/04	07/28/04
55333	Gateway Country Stores, LLC (Wkrs)	Whitehall, PA	07/30/04	07/28/04
55334	Mulholland Brothers (Wkrs)	San Francisco, CA	07/30/04	07/21/04
55335	Falcon Products, Inc. (Comp)	Belmont, MS	07/30/04	07/21/04
55336	Sunrise Medical (Comp)	Fresno, CA	07/30/04	07/21/04
55337	Benee's Inc. (MO)	Framington, MO	07/30/04	07/28/04
55338	C and D Technologies, Inc. (Comp)	Huguenot, NY	07/30/04	07/20/04
55339	Fujitsu Network Communications (Wkrs)	Richardson, TX	07/30/04	07/22/04
55340	Rippewood Phosporous U.S., LLC (Wkrs)	Gallipolis Ferry, WV	07/30/04	07/28/04
55341	Express Personnel Service (Comp)	Redmond, WA	07/30/04	07/26/04
55342	TSI Logistics (Wkrs)	Macon, GA	07/30/04	07/29/04
55343	Victoria Vogue, Inc. (Comp)	Bethlehem, PA	07/30/04	07/28/04
55344	R and W Fashion, Inc. (Wkrs)	San Francisco, CA	07/30/04	07/22/04
55345	Fenton Art Glass, Co., Inc. (USWA)	Williamstown, WV	07/30/04	07/29/04
55346	Hamilton Beach/Proctor Silex, Inc. (Wkrs)	Southern Pines, NC	07/30/04	07/19/04
55347	Romar Textile Co., Inc. (Comp)	Elwood City, PA	07/30/04	07/21/04
55348	Ahearn And Soper Co., Inc. (NY)	E. Syracuse, NY	07/30/04	07/22/04
55349	Hardware Designers (Wkrs)	Marienville, PA	07/30/04	07/26/04
55350	Boden Store Fixtures (Comp)	Portland, OR	08/02/04	07/30/04
55351	DT Swiss, Inc. (Comp)	Grand Junction, CO	08/02/04	07/30/04
55352	BIC Corporation (Comp)	Milford, CT	08/02/04	08/02/04
55353	Big Joe's Manufacturing Co. (WI)	Wisconsin Dells, WI	08/02/04	07/30/04
55354	Knight Textile Corporation (Comp)	Saluda, SC	08/02/04	07/30/04
55355	Phillips-Advance Transformer (Comp)	Boscobal, WI	08/02/04	08/01/04
55356	GE Consumer Finance (Wkrs)	Mason, OH	08/02/04	07/30/04
55357	Sanmina-SCI Corporation (Comp)	Wilmington, MA	08/02/04	07/30/04
55358	ECE Holding, Inc. (Comp)	Eugene, OR	08/02/04	07/26/04
55359	Brown and Williamson-Wilson (Comp)	Wilson, NC	08/02/04	07/30/04
55360	Henry County Plywood (Wkrs)	Ridgeway, VA	08/03/04	07/31/04
55361	Boeing Company (UAW)	Lakewood, CA	08/03/04	08/02/04
55362	M.J. Wood Products (VT)	Merrisville, VT	08/03/04	07/27/04
55363	A and N Inc. (Comp)	Marion, NC	08/03/04	08/02/04
55364	Anderson 2000 (GA)	Peachtree City, GA	08/03/04	08/02/04
55365	National Textiles (Wkrs)	Forest City, NC	08/03/04	07/27/04
55366	Crisci Tool and Die Inc. (MA)	Leominster, MA	08/03/04	07/26/04
55367	Lexcraft, Inc. (Comp)	Fall River, MA	08/04/04	07/27/04
55368	Bomax, Inc. (Wkrs)	Watertown, NY	08/04/04	07/28/04
55369	California Concepts (CA)	Gardena, CA	08/04/04	07/27/04
55370	Permacel (Comp)	N. Brunswick, NJ	08/04/04	07/23/04
55371	Ace Products, Inc. (Comp)	Lineville, AZ	08/04/04	08/02/04
55372	Union Apparel, Inc. (Wkrs)	Norvelt, PA	08/04/04	07/29/04
55373	Broyhill Furniture Ind., Inc. (Wkrs)	Rutherfordton, NC	08/04/04	07/28/04
55374	Automodular Assemblies, Inc. (DE)	New Castle, DE	08/04/04	08/03/04
55375	JP Morgan Chase (Wkrs)	Hicksville, NY	08/04/04	07/18/04
55376	Teva Pharmaceuticals, U.S.A. (IBT)	Mexico, MO	08/04/04	08/03/04
55377	Gallade Technologies (USWA)	Saginaw, MI	08/04/04	07/29/04
55378	Employment Staffing (Comp)	Honea Path, SC	08/04/04	08/03/04
55379	Invisible Technologies (Comp)	Garrett, IN	08/04/04	08/02/04
55380	Pinnacle Foods Corporation (Comp)	Omaha, NE	08/04/04	08/03/04

APPENDIX—Continued

[TAA Petitions Instituted Between 7/26/04 and 8/6/04]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
55381	Med Data, Inc. (Comp)	Seattle, WA	08/04/04	07/26/04
55382	Eclipsys Corp/(CA)	Santa Rosa, CA	08/04/04	07/27/04
55383	Rockwell Automation (Comp)	Eau Claire, WI	08/05/04	07/20/04
55384	Pheasant Hill Mfg. (Wkrs)	Wagoner, OK	08/05/04	07/26/04
55385	Morse Automotive Corp. (AR)	Arkadelphia, AR	08/05/04	08/05/04
55386	MCI (Wkrs)	Albuquerque, NM	08/05/04	07/20/04
55387	Hartwell Industries (Comp)	Hartwell, GA	08/05/04	07/30/04
55388	Pelstar, LLC (Comp)	Bridgeview, IL	08/05/04	08/04/04
55389	Gerber Coburn (Comp)	Muskogee, OK	08/05/04	08/04/04
55390	Holliston Mills (Wkrs)	Kingsport, TN	08/05/04	07/30/04
55391	eMag Solutions, LLC (Wkrs)	Graham, TX	08/05/04	07/28/04
55392	Upright International Mfg., Ltd. (CA)	Madera, CA	08/05/04	07/23/04
55393	Kaz, Inc. (Wkrs)	Newbern, TN	08/06/04	08/04/04
55394	Technical Associates (GA)	Tifton, GA	08/06/04	08/05/04
55395	Dana Undies (Wkrs)	Blakely, GA	08/06/04	08/05/04
55396	Baker Furniture (MCIW)	Holland, MI	08/06/04	07/27/04
55397	VIP USA, Inc. (TX)	Irving, TX	08/06/04	08/06/04
55398	Thomasville Furniture Ind. (Wkrs)	Thomasville, NC	08/06/04	07/27/04
55399	Lonza, Inc. (Wkrs)	Pasadena, TX	08/06/04	08/04/04
55400	Rohr Lingerie, Inc. (Comp)	Old Forge, PA	08/06/04	08/05/04
55401	Mount Vernon Mills, Inc. (Comp)	Cleveland, GA	08/06/04	08/05/04
55402	Royal Home Fashions (Wkrs)	Henderson, NC	08/06/04	08/05/04

[FR Doc. 04–19316 Filed 8–23–04; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,380]

Pinnacle Foods Corporation, Swanson Division, Omaha, NE; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 4, 2004 in response to a petition filed by a company official on behalf of workers at Pinnacle Foods Corporation, Swanson Division, Omaha, Nebraska.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 12th day of August, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–19319 Filed 8–23–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,369]

SEH America, Inc., Vancouver, WA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 26, 2004, in response to a worker petition filed by a company official on behalf of workers at SEH America, Inc., Vancouver, Washington.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 2nd day of April 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–19320 Filed 8–23–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,406]

United States Can Company, New Castle, PA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 9, 2004, in response to a petition filed by the company on behalf of workers at United States Can Company, New Castle, Pennsylvania.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 12th day of August, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–19317 Filed 8–23–04; 8:45 am]

BILLING CODE 4510–30–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond

to, a collection of information unless it displays a current valid OMB control number.

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* 10 CFR part 19, "Notices, Instructions, and Reports to Workers: Inspection and Investigations".

3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* As necessary in order that adequate and timely reports of radiation exposure be made to individuals involved in NRC-licensed activities.

5. *Who will be required or asked to report:* Licensees authorized to receive, possess, use, or transfer material licensed by the NRC.

6. *An estimate of the number of responses:* 4,906 (256 plus 4,650 recordkeepers).

7. *The estimated number of annual respondents:* 4,650.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 35,674 hours (4,553 reporting [approximately 17.8 hours per response] and 31,121 recordkeeping [approximately 6.7 hours per recordkeeper]).

9. *An indication of whether section 3507(d), Pub. L. 104–13 applies:* Not applicable.

10. *Abstract:* Title 10 of the Code of Federal Regulations, part 19, requires licensees to advise workers on an annual basis of any radiation exposure they may have received as a result of NRC-licensed activities or when certain conditions are met. These conditions apply during termination of the worker's employment, at the request of a worker, former worker, or when the worker's employer (the NRC licensee) must report radiation exposure information on the worker to the NRC. Part 19 also establishes requirements for instructions by licensees to individuals participating in licensed activities and options available to these individuals in connection with Commission inspections of licensees to ascertain compliance with the provisions of the Atomic Energy Act of 1954, as amended, Title II of the Energy Reorganization Act of 1974, and regulations, orders and licenses thereunder regarding radiological working conditions.

The worker should be informed of the radiation dose he or she receives because: (a) That information is needed by both a new employer and the individual when the employee changes jobs in the nuclear industry; (b) the individual needs to know the radiation dose received as a result of an accident or incident (if this dose is in excess of the 10 CFR part 20 limits) so that he or she can seek counseling about future work involving radiation, medical attention, or both, as desired; and (c) since long-term exposure to radiation may be an adverse health factor, the individual needs to know whether the accumulated dose is being controlled within NRC limits. The worker also needs to know about health risks from occupational exposure to radioactive materials or radiation, precautions or procedures to minimize exposure, worker responsibilities and options to report any licensee conditions which may lead to or cause a violation of Commission regulations, and individual radiation exposure reports which are available to him.

A copy of the final 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 World Wide 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 should be directed to the OMB reviewer listed below by September 22, 2004. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. OMB Desk Officer, Office of Information and Regulatory Affairs (3150–0044), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

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

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 04–19308 Filed 8–23–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–341]

Detroit Edison Company, Fermi 2; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–43, issued to the Detroit Edison Company (the licensee), for operation of Fermi 2 located in Monroe County, Michigan.

The proposed amendment would allow entry into a mode or other specified condition in the applicability of a technical specification (TS), while in a condition statement and the associated required actions of the TS, provided the licensee performs a risk assessment and manages risk consistent with the program in place for complying with the requirements of Title 10 of the Code of Federal Regulations (10 CFR), Part 50, Section 50.65(a)(4). Limiting Condition for Operation (LCO) 3.0.4 exceptions in individual TSs would be eliminated, and Surveillance Requirement (SR) 3.0.4 revised to reflect the LCO 3.0.4 allowance.

This change was proposed by the industry's Technical Specification Task Force (TSTF) and is designated TSTF–359. The NRC staff issued a notice of opportunity for comment in the **Federal Register** on August 2, 2002 (67 FR 50475), on possible amendments concerning TSTF–359, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line-item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on April 4, 2003 (68 FR 16579). The licensee affirmed the applicability of the model NSHC determination in its application dated April 1, 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 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), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The proposed change allows entry into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS. Being in a TS condition and the associated required actions is not an initiator of any accident previously evaluated. Therefore, the probability of an accident previously evaluated is not significantly increased. The consequences of an accident while relying on required actions as allowed by proposed LCO 3.0.4, are no different than the consequences of an accident while entering and relying on the required actions while starting in a condition of applicability of the TS. Therefore, the consequences of an accident previously evaluated are not significantly affected by this change. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed). Entering into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS, will not introduce new failure modes or effects and will not, in the absence of other unrelated failures, lead to an accident whose consequences exceed the consequences of accidents previously evaluated. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from an accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in a Margin of Safety.

The proposed change allows entry into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS. The TS allow operation of the plant without the full complement of equipment through the conditions for not meeting the TS LCO. The risk associated with this allowance is managed by the imposition of required actions that must be performed within the prescribed completion times. The net effect of being in a TS condition on the margin of safety is not considered significant. The proposed change does not alter the required actions or completion times of the TS. The proposed change allows TS conditions to be entered, and the associated required actions and completion times to be used in new circumstances. This use is predicated upon the licensee's performance of a risk assessment and the management of plant risk. The change also eliminates current allowances for utilizing required actions and completion times in similar circumstances, without assessing and managing risk. The net change to the margin of safety is insignificant. Therefore, this change does not involve a significant reduction in a margin of safety.

Based on the reasoning presented the above and the previous discussion of the amendment request the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309, 2.304, and 2.305 which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing and petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel will rule on the request and petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) The nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) The nature and

extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) The possible effect of any decision or order which may be entered in the proceeding on the requesters/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)–(viii).

A request for a hearing and a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) Courier, express mail, or expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, HEARINGDOCKET@NRC.GOV; or (4) Facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A request for hearing and petition for leave to intervene filed by e-mail or facsimile transmission need not comply with the formal requirements of 10 CFR 2.304 (b) (c) and (d) if an original and two (2) copies that otherwise comply with the requirements of Section 2.304 are mailed within two (2) days of the filing by e-mail or facsimile transmission to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by email to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to Peter Marquardt, Legal Department, 688 WCB, Detroit Edison Company, 2000 2nd Avenue, Detroit, Michigan 48226–1279, the attorney for the licensee.

For further details with respect to this action, see the application for amendment dated April 1, 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 16th day of August, 2004.

For the Nuclear Regulatory Commission.

David P. Beaulieu,

Project Manager, Section 1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 04–19306 Filed 8–23–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–247 and 50–286; License Nos. DPR–26 and DPR–64]

Entergy Nuclear Operations, Inc.; Notice of Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Nuclear Reactor Regulation, has issued a Director's Decision with regard to a Petition dated April 23, 2003, filed by the Honorable Richard Blumenthal, hereinafter referred to as the "Petitioner." The Petition was supplemented on June 3 and October 16, 2003. The Petition concerns the operation of the Indian Point Nuclear Generating Unit Nos. 2 and 3 (IP2 and 3).

The Petition requested that the Nuclear Regulatory Commission (NRC) take the following actions: (1) Order the licensee for IP2 and 3 to conduct a full review of the facility's (a) vulnerabilities and security measures and (b) evacuation plans and, pending such review, suspend operations, revoke the operating license, or take other measures resulting in a temporary shutdown of IP2 and 3; (2) require the licensee to provide information documenting the existing security measures which protect the IP facility against terrorist attacks; (3) immediately modify the IP2 and 3 operating licenses to mandate a defense and security system sufficient to protect the entire facility from a land-or water-based terrorist attack; (4) order the revision of the licensee's Emergency Response Plan and the Radiological Emergency Response Plans for the State of New York and the counties near the plant to account for possible terrorist attacks; and (5) take prompt action to permanently retire the facility if, after

conducting a full review of the facility's vulnerabilities, security measures, and evacuation plans, the NRC cannot sufficiently ensure the security of the IP facility against terrorist threats or cannot ensure the safety of New York and Connecticut citizens in the event of an accident or terrorist attack.

The Petitioner's representative participated in a teleconference with the Petition Review Board (PRB) on June 19, 2003, to discuss the Petition. This teleconference gave the Petitioner and the licensee an opportunity to provide additional information and to clarify issues raised in the Petition as supplemented. The results of this discussion were considered in the PRB's determination regarding the request for immediate action and in establishing the schedule for reviewing the Petition.

In a letter dated July 3, 2003, the PRB notified the Petitioner that it had determined that his request would be treated pursuant to 10 CFR 2.206 of the Commission's regulations. The July 3, 2003, letter further stated: "In response to your requests for immediate actions contained in items 1, 2, 3, and 4 above, the NRC has, in effect, partially granted your requests."

The NRC sent a copy of the proposed Director's Decision to the Petitioner and to Entergy Nuclear Operations, Inc. (the licensee), for comment on May 17, 2004. The Petitioner responded with comments on June 18, 2004. The comments and the NRC staff's response to them are included in the Director's Decision.

The Director of the Office of Nuclear Reactor Regulation has determined that the NRC's actions have, in effect, partially granted the Petitioner's request for an immediate review of vulnerabilities, security measures, and evacuation and emergency response planning at IP2 and 3. In addition, the NRC previously issued a Director's Decision on November 18, 2002, which addresses many of the security measures and emergency planning issues raised in this Petition. *See* Indian Point, 56 NRC at 300–311. No further action is deemed necessary to address the Petitioner's request regarding these issues. Subsequent to that November 18, 2002, Director's Decision, the NRC in its April 29, 2003, Orders required IP and other plants to implement additional security measures. Moreover, on July 25, 2003, the Federal Emergency Management Agency (FEMA) determined that reasonable assurance existed that appropriate protective measures to protect the health and safety of communities around IP2 and 3 can be implemented in the event of a radiological incident at the IP facility. *See* 68 FR 57702 (October 6, 2003). FEMA reaffirmed this position in a letter to the Petitioner dated June 1, 2004. Consequently, the NRC denies the remainder of the Petitioner's requests. The reasons for this decision are explained in the Director's Decision pursuant to Title 10 of Code of Federal Regulations (10 CFR) Section 2.206 (DD–04–03), the complete text of which is available in ADAMS for inspection at the Commission's Public Document Room, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and from the ADAMS Public Library component on the NRC's Web site, *http://www.nrc.gov/reading-rm.html* (the Public Electronic Reading Room).

A copy of the Director's Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206 of the Commission's regulations. As provided for by this regulation, the Director's Decision will constitute the final action of the Commission 25 days after the date of the Decision unless the Commission, on its own motion, institutes a review of the Director's Decision in that time.

Dated at Rockville, Maryland, this 17th day of August 2004.

For the Nuclear Regulatory Commission.

J.E. Dyer,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 04–19307 Filed 8–23–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Policy Statement on the Treatment of Environmental Justice Matters in NRC Regulatory and Licensing Actions

AGENCY: Nuclear Regulatory Commission.

ACTION: Final policy statement.

SUMMARY: On November 5, 2003 (68 FR 62642), the Commission issued, for public comment, a draft policy statement on the treatment of environmental justice (EJ) matters in Nuclear Regulatory Commission (NRC) regulatory and licensing actions. This final policy statement reaffirms that the Commission is committed to full compliance with the requirements of the National Environmental Policy Act (NEPA) in all of its regulatory and licensing actions. The Commission recognizes that the impacts, for NEPA purposes, of its regulatory or licensing actions on certain populations may be different from impacts on the general population due to a community's distinct cultural characteristics or practices. Disproportionately high and adverse impacts of a proposed action that fall heavily on a particular community call for close scrutiny—a hard look—under NEPA. While Executive Order (E.O.) 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," characterizes these impacts as involving an "environmental justice" matter, the NRC believes that an analysis of disproportionately high and adverse impacts needs to be done as part of the agency's NEPA obligations to accurately identify and disclose all significant environmental impacts associated with a proposed action. Consequently, while the NRC is committed to the general goals of E.O. 12898, it will strive to meet those goals through its normal and traditional NEPA review process. This final policy statement reflects the pertinent comments received on the published draft policy statement.

DATES: Effective August 24, 2004.

FOR FURTHER INFORMATION CONTACT: Brooke G. Smith, Office of General Counsel, Mail Stop O–15D21, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: (301) 415–2490; fax number: (301) 415–2036; e-mail: *bgs@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In February 1994, President Clinton issued E.O. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," which directed each Federal agency to "* * * make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations. * * *" Executive Order No. 12898 (Section 1–101), 59 FR 7629 (February 16, 1994). Although

independent agencies, such as the NRC, were only requested, rather than directed, to comply with the E.O., NRC Chairman Ivan Selin, in a letter to President Clinton, indicated that the NRC would endeavor to carry out the measures set forth in the E.O. and the accompanying memorandum as part of the NRC's efforts to comply with the requirements of NEPA. *See* Letter to President from Ivan Selin, March 31, 1994. Following publication of the Council on Environmental Quality's (CEQ's) guidelines [1] in December 1997 on how to incorporate environmental justice in the NEPA review process, the NRC staff in the Office of Nuclear Material Safety and Safeguards (NMSS) and the Office of Nuclear Reactor Regulation (NRR) each developed their own environmental justice guidance with the CEQ guidance as the model. *See* NUREG–1748, "*Environmental Review Guidance for Licensing Actions Associated with NMSS Programs*" (August 22, 2003) (ADAMS Accession No. ML032450279); NRR Office Instruction, LIC–203, Rev. 1, "*Procedural Guidance for Preparing Environmental Assessments and Considering Environmental Issues*" (May 24, 2004) (ADAMS Accession No. ML033550003).

In 1998, the Commission, for the first time in an adjudicatory licensing proceeding, analyzed the E.O. in *Louisiana Energy Services* (*LES*). *See Louisiana Energy Services* (Claiborne Enrichment Center), CLI–98–3, 47 NRC 77 (1998). In *LES*, the applicant was seeking an NRC license to construct and operate a privately owned uranium enrichment facility on 70 acres between two African American communities, Center Springs and Forest Grove. *See id.* at 83. One of the impacts of constructing and operating the facility entailed closing and relocating a parish road bisecting the proposed enrichment facility site. *See id.* The intervenor's contention alleged that the discussion of impacts in the applicant's environmental report was inadequate because it failed to fully assess the disproportionate socioeconomic impacts of the proposal on the adjacent African American communities. *See id.* at 86.

In *LES*, the Commission held that "[d]isparate impact analysis is our principal tool for advancing environmental justice under NEPA. The NRC's goal is to identify and adequately weigh, or mitigate, effects on low-income and minority communities that become apparent only by considering factors peculiar to those communities." *Id.* at 100. The Commission emphasized that the E.O. did not establish any new rights or remedies; instead, the Commission based its decision on NEPA, stating that "[t]he only "existing law" conceivably pertinent here is NEPA, a statute that centers on environmental impacts." Id. at 102.

This view was reiterated by the Commission in *Private Fuel Storage* (*PFS*). *See PFS* (Independent Spent Fuel Storage Installation), CLI–02–20, 56 NRC 147, 153–55 (2002); see also PFS, CLI–04–09, 59 NRC 120 (2004). In PFS, the Commission stated that environmental justice, as applied at the NRC, "means that the agency will make an effort under NEPA to become aware of the demographic and economic circumstances of local communities where nuclear facilities are to be sited, and take care to mitigate or avoid special impacts attributable to the special character of the community." *Id.* at 156.

The purpose of this policy statement is to present a comprehensive statement of the Commission's policy on the treatment of environmental justice matters in NRC regulatory and licensing actions. The policy statement incorporates past Commission decisions in *LES* and *PFS*, staff environmental guidance, as well as Federal case law on environmental justice. The proposed policy statement, "Policy Statement on the Treatment of Environmental Justice Matters in NRC Regulatory and Licensing Actions," was published in the **Federal Register** on November 5, 2003 (68 FR 62642). After an extension, the public comment period expired on February 5, 2004. This final policy statement reflects the pertinent comments received on the published draft policy statement.

II. Summary of Public Comments and Responses to Comments

Twenty-nine organizations and individuals submitted written comments on the draft policy statement. The commenters represented a variety of interests. Comments were received from individuals, Federal and State agencies, and citizen, environmental, and industry groups. The comments addressed a wide range of issues concerning the treatment of environmental justice matters in the Commission's regulatory and licensing actions. The Commission also received approximately 700 postcards expressing general opposition to the policy statement.

The following sections A through H represent major subject areas and describe the principal public comments received on the draft policy statement (organized according to the major subject areas) and present NRC responses to those comments.

(A) General Comments
(B) Creation of New or Substantive Rights
(C) NEPA as a Basis for Considering Environmental Justice-Related Matters
(D) Racial Motivation
(E) Environmental Assessments
(F) Generic/Programmatic EISs
(G) Numeric Criteria
(H) Scoping/Public Participation

A. General Comments

A.1 Comment: Some commenters suggested that the policy statement include a detailed explanation of how the new policy on environment justice differs from the current staff EJ guidance and NRC practice. Specifically, one commenter stated that the NRC should make explicit how the new policy would change its treatment of EJ-related issues. Another commenter suggested that the statement provide examples detailing how NEPA would be implemented and interpreted under the new policy statement.

Another commenter recommended that the NRC develop a comprehensive statement that includes an analysis of the impacts and effects of the proposed action on low-income and minority populations by building on the past ten years of EJ policy development and guidance. Another commenter recommended that the NRC review staff guidance documents prepared by the NRC and other Federal agencies on implementing the E.O. and evaluate how well the guidance was carried out and how effective the guidance has been. After identifying the effective portions, the comment stated that the NRC should revise and assemble the guidance into a single, integrated policy that, at a minimum, contains language from CEQ's "Environmental Justice: Guidance Under the National Environmental Policy Act."

Response: This policy statement is intended to be a Commission-approved general clarification of the Commission's position on the treatment of environmental justice issues in NRC regulatory and licensing actions. This statement reaffirms the Commission's

[1] "Environmental Justice, Guidance Under the National Environmental Policy Act," Council on Environmental Quality (Dec. 10, 1997). The NRC provided comments on the CEQ's draft and revised draft versions of this document to both CEQ and the Office of Management and Budget. Letter to Mr. Bradley M. Campbell, Associate Director for Toxics and Environmental Quality, Council on Environmental Quality from Hugh L. Thompson, Jr., Deputy Executive Director for Regulatory Programs, U.S. NRC, April 25, 1997; letter to Mr. Zach Church, Office of Management and Budget, from Hugh L. Thompson, Jr., Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support, May 10, 1996.

commitment to pursue and address environmental justice policy goals through the NEPA process by (1) Consolidating the Commission's views as set forth in the *LES* and *PFS* decisions, (2) combining NRR and NMSS guidance to provide an agency prospective, and (3) addressing current case law relevant to environmental justice matters as litigated in the federal court system. In preparing the policy statement, the Commission also consulted guidance from other Federal agencies and CEQ, regarding the treatment of environmental justice.

This policy statement does not change how the agency will implement or interpret NEPA, except to clarify certain procedures that correctly identify and adequately weigh significant adverse environmental impacts on low-income and minority populations by assessing impacts peculiar to those communities. At bottom, this policy statement does not represent a change in the overall practice of the Commission with regard to EJ-related matters but a clarification that the NRC will address EJ matters in its normal NEPA approach.

A.2 Comment: One commenter stated that the draft policy statement narrows the scope of E.O. 12898 and NEPA with respect to environmental justice issues. This commenter asserts that the policy statement, which provides that "* * * EJ issues are only considered when and to the extent required by NEPA," limits agency discretionary authority in considering EJ issues and, thus, should be changed to conform to the E.O. urging that agencies address environmental justice "to the greatest extent practicable and permitted by law * * *" and to the CEQ Guidance.

Response: As an independent agency, the Commission is not required to follow the E.O. or to adopt CEQ guidelines. The E.O. itself states that it does not change an agency's obligations or expand its authority. The Commission's intent in drafting an EJ policy statement is simply to ensure that EJ is a part of the normal and standard NEPA process in NRC regulatory and licensing actions.

A.3 Comment: One commenter stated that the draft policy statement disregards NRC staff guidance. Specifically, the commenter stated that the policy overlooks NRR's guidance for ensuring that public participation by affected minority and low-income communities is encouraged. Also, the commenter stated that the policy statement overlooks steps developed by NRC staff to ensure that an adequate NEPA review of environmental impacts on minority communities has been done.

Response: This policy statement does not disregard staff guidance. Rather, it seeks to clarify the Commission's environmental justice policy, by, among other things, combining NRR and NMSS guidance to provide a consolidated agency view. NRR and NMSS staff guidance relating to NEPA and, specifically, environmental justice will continue to be used and will be updated, if necessary, to reflect the direction of this final policy statement. Matters not addressed in the policy statement but discussed in the staff guidance will remain unchanged.

A.4 Comment: Some commenters urged that the draft statement be rejected because it retreats from or undermines the goals and intent of E.O. 12898. Other commenters stated that the policy statement de-emphasizes EJ matters in NRC licensing proceedings. Another similar letter commented that the NRC has declared E.O. 12898 to be irrelevant by limiting EJ matters to the NEPA context. The commenter noted that it was the shortcomings and ambiguity of NEPA that made the E.O. necessary in the first place.

Response: The Commission is committed to the general goals set forth in E.O. 12898, and strives to meet those goals as part of its NEPA review process. While the policy statement clarifies that EJ per se is not a litigable issue in our proceedings, it does not de-emphasize the importance of adequately weighing or mitigating the effects of a proposed action on low-income and minority communities by assessing impacts peculiar to those communities. Rather, the policy statement sets forth the criteria for admissible contentions in this area within the NEPA context and consistent with the Commission's regulations in 10 CFR Part 2.

A.5 Comment: Several commenters stated that the policy appears to support the Nuclear Energy Institute's position on environmental justice as submitted to the Commission in December 2002.

Response: While the Commission agreed with some aspects of NEI's position as set forth in its December 2002 letter to the agency, there were a number of positions that the Commission did not agree with as reflected in this policy statement. This policy statement reflects the position of the Commission after considering all of the comments received in response to the draft policy statement.

A.6 Comment: One commenter stated that it would be helpful to understand the policy statement's impact on the Commission's future decision whether to adopt the Department of Energy's (DOE's) final environmental impact statement (EIS) on the High-Level Waste Repository at Yucca Mountain.

Response: Given that the policy statement is not site-specific, it is premature for the Commission to address the specific comment on the Yucca Mountain High-Level Waste Repository. With that said, the Nuclear Waste Policy Act of 1982 (NWPA) requires the NRC to adopt, "to the extent practicable," the final EIS prepared by DOE in connection with the issuance of a construction authorization and license for the Yucca Mountain High-Level Waste Repository. *See* 42 U.S.C. 10134(f)(4). Commission regulations that set forth the standards used to determine whether it is practicable for the Commission to adopt the final EIS published by DOE are at 10 CFR 51.109. These standards will not be impacted by the publication of this policy statement.

A.7 Comment: Several commenters expressed concern that the policy statement does not address mitigation of disproportionate environmental impacts falling on low-income and minority populations.

Response: Current NRR and NMSS staff guidance adequately addresses the issue of mitigation, making clarification in the policy statement unnecessary. For example, with regard to environmental justice matters, Appendix C of NUREG–1748 states that "[i]f there are significant impacts to the minority or low-income population, it is then necessary to look at mitigative measures. The reviewer should determine and discuss if there are any mitigative measures that could be taken to reduce the impact. To the extent practicable, mitigation measures should reflect the needs and preferences of the affected minority and low-income populations." NUREG–1748, C–6, 7.

A.8 Comment: Several comments dealt with the cumulative impacts on certain populations and regions. Specifically, in the context of the proposed Yucca Mountain High-Level Waste Repository, it was stated that Nevada has and continues to bear "the burden of nuclear projects for the nation."

Response: The Commission considers cumulative impacts when preparing an environmental impact statement for a proposed action. With regard to environmental justice matters, applicants are asked to provide NRC staff with a description of cumulative impacts to low-income and minority populations and socioeconomic resources, if applicable, in their environmental report (ER) submitted

with any license application. NUREG–1748, 6.4.11.

With regard to the proposed Yucca Mountain High-Level Waste Repository, the NWPA requires the NRC to adopt, "to the extent practicable," the final EIS prepared by DOE in connection with the issuance of a construction authorization and license for the repository. *See* 42 U.S.C. 10134(f)(4). The NRC will follow the NWPA direction.

A.9 Comment: One commenter suggested that where the NRC has never analyzed EJ issues at a particular facility, the NRC should supplement the previous EIS rather than preparing an EA or relying on categorical exclusions.

Response: Pursuant to 10 CFR 51.92, the NRC staff will prepare a supplement to an EIS where the proposed action has not been taken if (1) There are substantial changes in the proposed action that are relevant to environmental concerns or (2) there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. 10 CFR 51.92(a); *see also* 10 CFR 51.72(a). Additionally, the staff may supplement an EIS when, in its opinion, preparation of the supplement will further the purposes of NEPA. 10 CFR 51.92(b). The Commission will continue to implement these provisions of its environmental protection regulations and will address EJ matters consistent with the existing NEPA review process and NRC's implementing regulations in Part 51.

A.10 Comment: One commenter recommended that in order to "provide greater certainty and discipline in licensing proceedings in which EJ [issues are] raised," the NRC should establish, through adjudicatory proceedings or rulemaking, binding guidance for the litigation of EJ issues. The commenter also encouraged that the Commission either have prompt interlocutory review of admitted EJ contentions or determine the admissibility of proffered EJ contentions.

Response: The Commission in LES, CLI–98–3, 47 NRC 77 (1998), and in PFS, CLI–02–20, 56 NRC 147, provided guidance on the admissibility of EJ contentions under NEPA. Recently, in a Notice of Hearing and Commission Order on a new LES application, the Commission's guidance for this proceeding stated that the Commission itself, rather than the Atomic Safety and Licensing Board, "will make the determination as to whether contentions associated with environmental justice matters will be admitted in [the] proceeding." *Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI–04–03, 59 NRC 10, 15 (2004). Once the admissibility determination is made by the Commission, it will provide the appropriate guidance on the litigation of admissible EJ contentions, if any. *Id.* This policy statement will serve as general guidance on EJ issues and the Commission will determine whether there is a need for the Commission to provide additional guidance on a case-by-case basis.

A.11 Comment: Several commenters recommended that the policy statement include the four goals established in the E.O. and found in the NRC's 1995 Environmental Justice Strategy (ADAMS Accession No. ML003756575 (March 24, 1995)), and that the policy statement indicate how the Commission will achieve those goals. The goals are: (a) Integration of EJ into NRC's NEPA activities, (b) continuing senior management involvement in EJ reviews, (c) openness and clarity, and (d) seeking and welcoming public participation.

Response: The policy statement, as well as NRR and NMSS staff guidance, reflects the four environmental justice goals set out above.

(a) Consistent with the goals set forth in the E.O. and in the Commission's 1995 EJ Strategy, the NRC considers disproportionately high and adverse impacts on low-income and minority populations as part of its NEPA review.

(b) It is NRC's policy that senior managers review and concur on every EIS prepared by the staff. *See* NUREG–1748, 4.5. Thus, there is and will be continuing senior management involvement in NRC's EJ reviews. In addition, changes or updates made to staff environmental guidance are reviewed and concurred on by senior agency officials.

(c) The NRC's NEPA process for preparation of an environmental impact statement mandates openness and clarity and provides for, among other things, public scoping meetings. The NRC usually holds at least one public meeting in the vicinity of the proposed action involving an EIS. The NRC also holds a poster session or open house prior to the meeting to provide an opportunity for one-on-one discussions with interested parties. Finally, the NRC posts publically available information regarding proposed actions on the agency Web site and in press releases, meeting notices, **Federal Register** notices, and will mail certain documents, such as the scoping summary report, to interested members of the public.

(d) The scoping process identified in 10 CFR 51.29 and public participation in commenting on the draft EIS are a fundamental part of the NEPA process and are consistent with the E.O. and CEQ guidelines. Both NMSS and NRR have issued guidance that provides for public participation in identifying minority and low-income populations through the EIS scoping process (*i.e.* interviews, public comment, local meetings, and general outreach efforts). The scoping meetings are announced in the **Federal Register**, on the NRC Web site, in local or regional newspapers, posters around the meeting location, and/or on local radio and television stations at least one week before the public meeting. The NRC requests the assistance of tribal, church, and community leaders to disseminate the information to potentially affected groups. Participants in the scoping process are provided an opportunity to submit oral comments at the scoping meeting and written comments through a project e-mail address or by regular mail.

A.12 Comment: One comment letter stated that the policy statement should clearly articulate that it covers and will look at potential impacts from all operations related to a proposed action. Specifically, the commenter stated that with regard to Nye County, the location of the proposed high-level waste repository at Yucca Mountain, an environmental analysis should include transportation of spent nuclear fuel and high-level waste to the proposed repository.

Response: The policy statement indicates that the EJ analysis should be limited to the impacts associated with the proposed action (*i.e.*, the communities in the vicinity of the proposed action). This policy statement does not address site-specific EJ concerns. The NWPA requires the NRC to adopt, "to the extent practicable," the final EIS prepared by DOE in connection with the issuance of a construction authorization and license for the Yucca Mountain High-Level Waste Repository. *See* 42 U.S.C. 10134(f)(4). The NRC will follow the NWPA direction.

B. Creation of New or Substantive Rights

B.1 Comment: One comment asserted that the Commission's failure to conduct an EJ evaluation in an EIS or noncompliance in any other way with the E.O. as part of the Commission's NEPA responsibility would not be grounds for the NRC to deny the proposed licensing action.

Response: It is the Commission's position that the E.O. itself does not establish new substantive or procedural requirements applicable to NRC regulatory or licensing activities. The E.O. itself is very clear on this point. As

a procedural statute, however, NEPA requires Federal agencies to take a "hard look" at the environmental impacts of major Federal actions significantly affecting the quality of the human environment. Therefore, an EIS must appropriately assess disproportionately high and adverse impacts of a proposed action that fall heavily on a particular community.

B.2 Comment: While agreeing with the Commission that E.O. 12898 does not create any new rights or a private cause of action, one commenter asserted that this was not relevant in the context of the NRC's licensing proceedings because there is no requirement that a contention or area of concern be grounded in a statutorily created right. The commenter stated that neither the Atomic Energy Act of 1954, as amended (AEA) nor the NRC regulations mandate that the admission of contentions be based on a particular statutorily created right or cause of action.

Response: The Commission's regulations setting forth the standards for admissible contentions are found at 10 CFR 2.309. This section provides that for each contention, the request for a hearing or petition to intervene must, among other things, (1) Provide a specific statement of the issue of law or fact to be raised or controverted, (2) provide a brief explanation of the basis for the contention, (3) demonstrate that the issue raised in the contention is within the scope of the proceeding, and (4) demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding. *See* 10 CFR 2.309(f). In the context of EJ-related matters, the only possible basis for an admissible contention is NEPA, which statutorily mandates a hard look at the significant environmental impacts of a proposed major Federal action. Because E.O. 12898 does not create any new rights, it cannot provide a legal basis for contentions to be litigated in NRC licensing proceedings.

B.3 Comment: Though noting that 6–609 of the E.O. expressly states that no new rights are created by the E.O., a commenter stated that at least two administrative appeals tribunals (the Environmental Appeals Board and the Interior Board of Land Appeals) have reviewed decisions for compliance with the E.O. as a matter of policy under existing statutory authority. The commenter suggested that the policy statement provide an explanation of how and under what standards issues of environmental justice are presently reviewed by the NRC within the context of NEPA or other statutory authority.

Response: Although independent agencies, such as the Commission, are not required to follow the E.O., the Commission has stated that it will endeavor to carry out the measures set forth in the E.O. The policy statement seeks to make clear that, in following the spirit of the E.O., the Commission's intent is to comply with NEPA.

B.4 Comment: Several commenters stated that the policy statement contradicts former Chairman Selin's acknowledgment that the E.O. applies to the NRC's requirements under NEPA. Specifically, the commenters stated that the E.O. intended to expand the scope of the NRC's NEPA requirements to include EJ-related matters in licensing proceedings, not limit that scope.

Response: Consistent with Commission practice and the E.O., EJ issues are addressed in the context of the agency's NEPA responsibilities. EJ-related matters properly within the NEPA context are limited only to the extent that any "EJ" contentions are valid NEPA contentions and are set out and supported as required by 10 CFR Part 2 of the Commission's regulations. The E.O. neither expanded nor limited the scope of the agency's NEPA responsibilities or the way environmental issues may be dealt with in agency proceedings.

C. NEPA as the Basis for Considering Environmental Justice-Related Matters

C.1 Comment: One commenter stated that the AEA provides a basis for the NRC to carry out the goals of E.O. 12898. The commenter noted that the AEA provides that the development of atomic energy shall be regulated so as to protect the health and safety of the public. Given the broad goals of the E.O. and the specific mandate of the AEA to protect public health and safety, the commenter stated that the AEA presents a clear opportunity for the NRC to address environmental hazards in low-income and minority communities.

Response: The AEA does not give the Commission the authority to consider EJ-related issues in NRC licensing and regulatory proceedings. Apart from the mandate set forth in NEPA, the Commission is limited to the consideration of radiological health and safety and common defense and security. *See New Hampshire* v. *Atomic Energy Commission*, 406 F.2d 170, 175, 176 (1st Cir. 1969).

C.2 Comment: One letter commented that NEPA is a procedural statute that does not require a particular outcome; by contrast, E.O. 12898 promotes the implementation of Federal policies and duties in a nondiscriminatory manner.

Response: As stated in the Presidential Memorandum, both "environmental and civil rights statutes provide many opportunities to address environmental hazards in minority communities and low-income communities." *Memorandum for Heads of All Departments and Agencies* (Feb. 11, 1994) (Presidential Memorandum). In the licensing context, the NRC's focus is on full disclosure, as required by NEPA, of the environmental impacts associated with a proposed action "* * * and [to] take care to mitigate or avoid special impacts attributable to the special character of the community." *PFS*, CLI–02–20, 56 NRC at 156.

In the context of providing financial assistance, the Commission's regulations in 10 CFR Part 4 prohibit discrimination with respect to race, color, national origin, or sex in any program or activity receiving Federal financial assistance from the NRC.

C.3 Comment: Several commenters stated that the E.O. is more than a mere reminder to the agencies of their preexisting EJ obligations. One commenter stated that by handling EJ matters as part of the Commission's "normal and traditional processes" the NRC is ignoring the E.O.'s direction to Federal agencies to be proactive in identifying and considering EJ matters in NEPA and other activities. Other commenters stated that the E.O. was an admission of failure in addressing EJ matters and was intended to rectify the failure by codifying EJ analysis into agency activities.

Response: The NRC strives to proactively identify and consider environmental justice issues in pertinent agency licensing and regulatory actions primarily by fulfilling its NEPA responsibilities for such actions. As part of NEPA's original mandate, agencies are required to look at the socioeconomic impacts that have a nexus to the physical environment. *See* 40 CFR 1508.8. It is the Commission's view that the obligation to consider and assess disproportionately high and adverse impacts on low-income and minority populations as part of its NEPA review was not created by the E.O. Rather, it is the Commission's view that the E.O. reminded agencies that such an analysis is appropriate in its normal and traditional NEPA review process.

While the E.O. directs Federal agencies to "* * * develop an agency-wide environmental justice strategy * * *," it did not suggest that agencies codify EJ analysis into their regulations. The E.O. directed Federal agencies to "* * * make achieving environmental justice [to the greatest extent practicable

and permitted by law] part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations. * * *" Executive Order No. 12898, 59 FR at 7629 (Section 1–101). In fact, the Presidential Memorandum specifically discussed implementing the E.O. within the bounds of already existing law, such as NEPA. See *Presidential Memorandum* at p. 1. In *LES,* CLI–98–3, 47 NRC 77, the Commission stated that "[t]he only 'existing law' conceivably pertinent [to the NRC's fulfillment of the E.O.] is NEPA, a statute that centers on environmental impacts." *LES,* 47 NRC at 102.

D. Racial Motivation

D.1 Comment: A number of commenters requested that the Commission reject the policy statement because it does not resolve the issue of racial discrimination in the siting of nuclear reactors and other facilities licensed by the NRC. Several comments stated that the policy statement should pay special attention to the nuclear industry's history of siting facilities in minority and disadvantaged communities with special attention to facilities sited on ancient ancestral homelands of Native Americans.

Response: The Commission continues to recognize that "racial discrimination is a persistent and enduring problem in American society." *LES,* CLI–98–3, 47 NRC 77, 101 (1998). However, as explained in the draft policy statement, EJ issues are only considered when and to the extent required by NEPA. NEPA is an environmental statute and a broad-ranging inquiry into allegations of racial discrimination goes beyond the scope of NEPA's mandate to adequately identify and weigh significant adverse environmental impacts.

D.2 Comment; Several commenters asserted that the statement that "racial motivation and fairness or equity issues are not cognizable under NEPA* * *" represents a debasement of the express intent and spirit of the E.O., which is an executive charge to take into consideration the complex matrix of race, class, and ethnic elements that might indicate discrimination against low-income and minority populations.

Several commenters stated that racial bias is a legitimate consideration in the NEPA process because it relates to the objectivity of the decisionmaking process for evaluating environmental impacts and choosing among alternatives. This commenter further asserted that expertise in racial discrimination is not necessary to determine that scientific criteria are not being applied objectively.

Response: NEPA is not the appropriate context in which to assess racial motivation and fairness or equity issues. As stated by the Commission in *LES,* "were NEPA construed broadly to require a full examination of every conceivable aspect of federally licensed projects, 'available resources may be spread so thin that agencies are unable adequately to pursue protection of the physical environment and natural resources." *LES,* CLI–98–3, 47 NRC 77, 102–03, *quoting Metropolitan Edison Co.,* 460 U.S. 766, 776 (1983).

E. Environmental Assessments

E.1 Comment: Several commenters stated that the policy of not doing an EJ review for an environmental assessment (EA) where a Finding of No Significant Impact (FONSI) is expected appears to absolve the NRC from carrying out the type of proactive reviews E.O. 12898 sought to promote. One letter expressed the concern that the NRC will use EAs and FONSIs to avoid an EJ analysis. This commenter stated that if the NRC has not done an EJ review in a site-specific EIS, then the NRC has no basis for determining whether a specific action has unique EJ impacts on a minority or low-income community. Another commenter stated that "absent [an EJ] review, it is possible that significant impacts to minorities and low-income populations could be missed."

A separate commenter, however, agreed with the draft policy statement that unless special circumstances exist, an EJ review is unnecessary in an EA where a FONSI is expected. Nevertheless, this commenter suggested that the policy statement "set forth with specificity the 'special circumstances' that will warrant [an EJ] review." Another commenter stated that the "special circumstances" requiring the completion of an EJ review should "arise where [a] facility has a clear potential for off-site impacts to minority and low-income communities and these impacts have never been addressed in any NEPA review."

Response: The Commission's policy does not eliminate the possibility of an EJ review in the context of an EA. Rather, the policy limits such a review to those times when a FONSI may not be appropriate because impacts that would not otherwise be significant could be significant due to the unique characteristics of low-income or minority communities. Under those special circumstances, an EJ review may be necessary to provide the basis for concluding that there are no significant environmental impacts. With regard to EAs, the policy statement clarifies the previously undefined "special circumstances" and notes that, in the case of most EAs, there are little or no offsite impacts and, therefore, an EJ review is generally not necessary to make a FONSI.

An EJ review in an EA is anticipated by the Commission, where, as described in one of the comments, a proposed action has clear potential for offsite impacts to minority and low-income communities. In these circumstances an EJ analysis will be done during the preparation of an EA regardless of whether an EJ analysis had been addressed in an earlier NEPA analysis for the site. However, an EJ analysis will not be performed during an EA if the proposed action does not create a clear potential for offsite impacts even in circumstances where EJ was not addressed in an earlier NEPA analysis for the site.

E.2. Comment: One commenter requested that the final policy statement clarify that the only circumstance warranting an EJ review in the EA/FONSI context is where a clear potential for offsite impacts from the proposed action exists.

Response: As discussed above and in the draft policy statement, the Commission does not foresee circumstances warranting an EJ review except where there is a clear potential for offsite impacts.

E.3 Comment: One commenter suggests that the NRC should solicit public comment with respect to EJ during the EA process to determine whether there are cumulative impacts that might be significant on the subject population.

Response: As a general matter, public comments are not sought during the preparation of an EA. During an EA, the NRC might seek public comment only in those special circumstances where there is a clear potential for offsite impacts and there are some indications of populations that might signal the existence of an EJ issue.

F. Generic/Programmatic EISs

F.1 Comment: Several commenters addressed the consideration of EJ-related matters in generic and programmatic EISs. The commenter's view was that in some circumstances, the consideration of EJ issues should be required when it is apparent that the generic NRC regulatory program will have significant impacts on a number of similar low-income or minority communities.

Response: The Commission believes it is difficult to foresee or predict many circumstances, if any, in which a meaningful NRC EJ analysis could be completed for a generic or programmatic EIS given the lack of site-specific information. Nonetheless, the Commission's policy will not preclude the possibility of an EJ analysis in programmatic or generic EISs if a meaningful review can be completed.

G. Numeric Criteria

G.1 Comment: Several commenters disagreed with the numeric guidance used to identify the geographic area in which demographic information is sought and to identify potentially affected low-income and minority communities. One commenter stated that the numeric limits are arbitrary in that no objective basis for setting those limits and no legal basis for that practice exist. The commenter further stated that the NRC must ensure that its NEPA evaluation properly identifies and accounts for unique facts associated with a particular community that may contribute to a larger or lesser impact. It should not matter whether that community falls within any of the numeric criteria used by the NRC staff to evaluate EJ, but rather whether there is any particular community that, by its very nature, would suffer a greater or lesser impact from a proposed Federal action.

Another commenter stated that the numeric guidance is misleading because such guidance may cause staff to overlook significantly and uniquely impacted areas because they failed the quantitative test and were not examined further. The same commenter also described such guidance as risky because such numerical measures may not encompass the range of factors used to determine low-income or minority status.

Response: The Commission recognizes that the numeric criteria are guidance—a starting point—for staff to use when defining the geographic area for assessment and identifying low-income and minority communities within the geographic area. To the extent possible, the staff will continue to use numeric guidance as a screening tool since such guidance should be sufficient in most cases; however, the staff analysis also includes the identification of EJ concerns during the scoping process. This is clearly articulated in the policy statement, as well as in existing staff guidance. *See* NUREG–1748.

G.2 Comment: One commenter stated the 50 miles normally used by NRR should be applied by NMSS in the case of the Yucca Mountain High-Level Waste Repository.

Response: This policy statement does not address site-specific concerns. In accordance with NEPA, and consistent with Commission practice, the geographic area assessed for NEPA purposes will be commensurate with the potential impact area of the proposed activity. The distances are guidelines used by NRR and NMSS to reflect the different activities regulated by those offices and are generally consistent with the area of potential impacts normally considered in NRC environmental and safety reviews. With regard to the high-level waste repository, the NWPA defines the agency's NEPA obligations.

G.3 Comment: One commenter suggested that the policy statement should encourage or require the selection of the methodology that identifies the most eligible census blocks, not the least when identifying low-income or minority populations. As an example, the commenter stated that using Nevada as the metric, Nye County may have only one low-income block. This block would not include the Yucca Mountain High-Level Waste Repository. However, the commenter noted that if Nye County is used as a metric for comparison, then most of the census blocks in the county may be EJ eligible. This commenter further stated that this is a more reasonable approach because rural areas generally are economically depressed.

Response: The NRC uses the Census "block group" as the geographic area for evaluating census data because the U.S. Census Bureau does not report information on income for "blocks", the smaller geographic area. In accordance with staff guidance, the impacted area may be compared to either the State or the County data. Furthermore, staff analysis will be supplemented by the results of the EIS scoping review to obtain additional information. This should adequately identify the presence, if any, of a low-income or minority population in the impacted area. This policy statement is not site-specific and cannot address the specific comment regarding the High-Level Waste Repository at Yucca Mountain.

H. Scoping/Public Participation

H.1 Comment: Several commenters assert that, in addition to the draft policy statement's paragraph addressing scoping, the final policy statement should include a public participation and outreach element in the decisionmaking process that conforms to the E.O., and CEQ and NRC policies.

Response: The Commission's intent in drafting the statement is to clarify that EJ is a normal, but not expansive, part of NEPA. The policy statement was not intended to address public participation more than the current 10 CFR Part 51 and staff environmental review guidance does.

III. Final Policy Statement

The Executive Order Does Not Create Any New or Substantive Requirements or Rights

E.O. 12898 does not establish new substantive or procedural requirements applicable to NRC regulatory or licensing activities. Section 6–609 of the E.O. explicitly states that the E.O. does not create any new right or benefit. By its terms, the E.O. is "intended only to improve the internal management of the executive branch and is not intended to, nor does it create any right [or] benefit * * * enforceable at law * * *" 59 FR at 7632–33 (Section 6–609); *see also Presidential Memorandum*. Courts addressing EJ issues have uniformly held that the E.O. does not create any new rights to judicial review. See, *e.g., Sur Contra La Contaminacion* v. *EPA*, 202 F.3d 443, 449–50 (1st Cir. 2000). Consequently, it is the Commission's position that the E.O. itself does not provide a legal basis for contentions to be admitted and litigated in NRC licensing proceedings. See *LES*, CLI–98–3, 47 NRC 77; *PFS*, CLI–02–20, 56 NRC 147.

NEPA, Not the Executive Order, Obligates the NRC To Consider Environmental Justice-Related Issues

The basis for admitting EJ contentions in NRC licensing proceedings stems from the agency's NEPA obligations, and EJ-related contentions had been admitted by an NRC Licensing Board prior to the issuance of the E.O. in 1994. *See LES*, LBP–91–41, 34 NRC at 353. As clearly stated in 1–101 of the E.O., an agency's EJ responsibilities are to be achieved to the extent permitted by law. *See* 59 FR at 7629 (Section 1–101). The accompanying Presidential Memorandum stated that "each Federal agency shall analyze the environmental effects * * * of Federal actions, including effects on minority communities and low-income communities, when such analysis is required by [NEPA]." *Memorandum for Heads of All Departments and Agencies* (Feb. 11, 1994) (Presidential Memorandum).[2] The E.O. simply serves

[2] NEPA is the only available statute under which the NRC can carry out the general goals of E.O. 12989. Although the Presidential Memorandum directed Federal agencies to ensure compliance

as an appropriate and timely reminder to agencies to become aware of the various demographic and economic circumstances of local communities as part of any socioeconomic analysis that might be required by NEPA or their authorizing statutes. *See* 40 CFR 1508.8 and 1508.14 (2003).

The Commission, in *LES*, has made it clear that EJ issues are only considered when and to the extent required by NEPA. The Commission held that the disparate impact analysis within the NEPA context is the tool for addressing EJ issues and that the "NRC's goal is to identify and adequately weigh or mitigate effects, on low-income and minority communities' by assessing impacts peculiar to those communities. *LES*, CLI–98–3, 47 NRC at 100; *see also, PFS*, CLI–02–20, 56 NRC at 156. At bottom, for the NRC, EJ is a tool, within the normal NEPA context, to identify communities that might otherwise be overlooked and identify impacts due to their uniqueness as part of the NRC's NEPA review process.

As part of NEPA's mandate, agencies are required to look at the socioeconomic impacts that have a nexus to the physical environment. *See* 40 CFR 1508.8 and 1508.14. An "environmental-justice"-related socioeconomic impact analysis is pertinent when there is a nexus to the human or physical environment or if an evaluation is necessary for an accurate cost-benefits analysis. *See One Thousand Friends of Iowa* v. *Mineta*, 250 F. Supp. 2d 1064, 1072 (S.D. Iowa 2002) (the fact that numerous courts have held that an agency's failure to expressly consider environmental justice does not create an independent basis for judicial review forecloses any argument that NEPA was designed to protect socioeconomic interests alone). Therefore, EJ *per se* is not a litigable issue in NRC proceedings. The NRC's obligation is to assess the proposed action for significant impacts to the physical or human environment. Thus, admissible contentions in this area are those which allege, with the requisite documentary basis and support as required by 10 CFR Part 2, that the proposed action will have significant adverse impacts on the physical or human environment that were not considered because the impacts to the community were not adequately evaluated.

Racial Motivation Not Cognizable Under NEPA

Racial motivation and fairness or equity issues are not cognizable under NEPA, and though discussed in the E.O., their consideration would be contrary to NEPA and the E.O.'s limiting language emphasizing that it creates no new rights.[3] The focus of any "EJ" review should be on identifying and weighing disproportionately significant and adverse environmental impacts on minority and low-income populations that may be different from the impacts on the general population. It is not a broad-ranging or even limited review of racial or economic discrimination. As the Commission explained in *LES*, "an inquiry into a license applicant's supposed discriminatory motives or acts would be far removed from NEPA's core interest: 'the physical environment—the world around us. * * *'" *LES*, CLI–98–3, 47 NRC at 102, *quoting Metropolitan Edison Co.* v. *People Against Nuclear Energy*, 460 U.S. 766, 772 (1983). Thus, the EJ evaluation should disclose whether low-income or minority populations are disproportionately impacted by the proposed action.

Environmental Assessments Normally Do Not Include Environmental Justice Analysis

The agency's assessment of environmental justice-related matters has been limited in the context of EAs. Previously, the Commission has stated that absent "significant impacts, an environmental justice review should not be considered for an EA where a Finding of No Significant Impact [FONSI] is issued unless special circumstances warrant the review." SRM–MO21121A (Supplemental)—Affirmation Session: 1. SECY–02–0179—Final Rule: Material Control and Accounting Amendments, Dec. 3, 2002 (ADAMS Accession No. ML023370498).[4] If there will be no significant impact as a result of the proposed action, it follows that an EJ review would not be necessary. However, the agency must be mindful of special circumstances that might warrant not making a FONSI. In most EAs, the Commission expects that there will be little or no offsite impacts and, consequently, impacts would not occur to people outside the facility. However, if there is a clear potential for significant offsite impacts from the proposed action then an appropriate EJ review might be needed to provide a basis for concluding that there are no unique impacts that would be significant. If the impacts are significant because of the uniqueness of the communities, then a FONSI may not be possible and mitigation or an EIS should be considered.

Generic and Programmatic Impact Statements Do Not Include Environmental Justice Analysis

An NRC EJ analysis should be limited to the impacts associated with the proposed action (*i.e.*, the communities in the vicinity of the proposed action). EJ-related issues differ from site to site and normally cannot be resolved generically. Consequently, EJ, as well as other socioeconomic issues, are normally considered in site-specific EISs. Thus, due to the site-specific nature of an EJ analysis, EJ-related issues are usually not considered during the preparation of a generic or programmatic EIS. EJ assessments would be performed as necessary in the underlying licensing action for each particular facility.

Need for Flexibility in NRC's Environmental Justice Analyses

The procedural guidelines for EJ review should allow for flexibility in the analysis to reflect the unique nature of each review. It is important, however, that the NRC be consistent in its approach to this matter and develop clear, defined procedural guidance for identifying minority and low-income communities and assessing the impacts they may experience.

1. Defining Geographic Area for Assessment

One of the first steps the staff takes in its EJ analysis is to identify the geographic area for which it seeks to obtain demographic information. While staff guidance states that the geographic scale should be commensurate with the potential impact area, NMSS and NRR have adopted numeric guidance based on activities that those offices regulate. Under current NMSS procedures, the potentially affected area is normally determined to be a radius of 0.6 mile from the center of the proposed site in urban areas, and four miles if the facility is located in a rural area. NRR normally uses a 50-mile radius that should be examined for licensing and regulatory

with the nondiscrimination requirements of Title VI of the Civil Rights Act of 1964 for all Federally funded programs and activities that affect human health or the environment, Title VI is inapplicable to the NRC's regulatory and licensing actions. Likewise, while environmental justice matters may be appropriately addressed during the permitting process under other environmental statutes, including the Resource Conservation and Recovery Act, the Clean Water Act, and the Clean Air Act, the NRC does not have permitting authority under those statutes.

[3] Such issues are more appropriately considered under Title VI of the Civil Rights Act. *See* LES, CLI–98–3, 47 NRC at 101–106. The NRC does not have the authority to enforce Title VI in the NRC licensing process.

[4] At least one court supports the view that EJ does not need to be considered in an EA. *See American Bus Ass'n* v. *Slater*, 1999 U.S. Dist. LEXIS 20936, 9 Am. Disabilities Cas. (BNA) 1427 (D.C. Cir. Sept. 10, 1999).

actions involving power reactors. These distances reflect the different activities regulated by NRR and NMSS and are consistent with the area of potential impacts normally considered in NRC environmental and safety reviews. However, these procedures provide that the distances are guidelines and that the geographic scale should be commensurate with the potential impact area and should include a sample of the surrounding population because the goal is to evaluate the communities, neighborhoods, and areas that may be disproportionately impacted.

For the purposes of NEPA, the Commission recognizes that numerical distances are helpful to characterize the likely extent of impacts for categories of regulatory action. Thus, we are retaining the current procedure as articulated by NMSS and NRR in their respective office guidance since this numeric guidance should be sufficient in most cases to include all areas with an actual or potential for reasonably foreseeable physical, social, cultural, and health impacts.

2. Identifying Low-Income and Minority Communities

Once the impacted area is identified, potentially affected low-income and minority communities should be identified. Under current NRC staff guidance, a minority or low-income community is identified by comparing the percentage of the minority or low-income population in the impacted area to the percentage of the minority or low-income population in the County (or Parish) and the State. If the percentage in the impacted area significantly exceeds that of the State or the County percentage for either the minority or low-income population then EJ will be considered in greater detail. "Significantly" is defined by staff guidance to be 20 percentage points. Alternatively, if either the minority or low-income population percentage in the impacted area exceeds 50 percent, EJ matters are considered in greater detail. As indicated above, numeric guidance is helpful; thus, the staff should continue to use such guidance in identifying minority and low-income communities. The staff's analysis will be supplemented by the results of the EIS scoping review discussed below.

3. Scoping

The NRC will emphasize scoping, the process identified in 10 CFR 51.29, and public participation in those instances where an EIS will be prepared. Reliance on traditional scoping is consistent with the E.O. and CEQ guidance. *See* E.O. 12898, 59 FR at 7632 (Section 5–5); *CEQ Guidance* at 10–13. CEQ guidance reminds us that "the participation of diverse groups in the scoping process is necessary for full consideration of the potential environmental impacts of a proposed agency action and any alternatives. By discussing and informing the public of the emerging issues related to the proposed action, agencies may reduce misunderstandings, build cooperative working relationships, educate the public and decisionmakers, and avoid potential conflicts." *CEQ Guidance* at 12. Thus, it is expected that in addition to reviewing available demographic data, a scoping process will be utilized preceding the preparation of a draft EIS. This will assist the NRC in ensuring that minority and low-income communities, including transient populations, affected by the proposed action are not overlooked in assessing the potential for significant impacts unique to those communities.

IV. Guidelines for Implementation of NEPA as to Environmental Justice Issues

- The legal basis for the NRC analyzing environmental impacts of a proposed Federal action on minority or low-income communities is NEPA, not Executive Order 12898. The E.O. emphasized the importance of considering the NEPA provision for socioeconomic impacts. The NRC considers and integrates what is referred to as environmental justice matters in its NEPA assessment of particular licensing or regulatory actions.
- In evaluating the human and physical environment under NEPA, effects on low-income and minority communities may only be apparent by considering factors peculiar to those communities. Thus, the goal of an EJ portion of the NEPA analysis is (1) To identify and assess environmental effects on low-income and minority communities by assessing impacts peculiar to those communities; and (2) to identify significant impacts, if any, that will fall disproportionately on minority and low-income communities. It is not a broad-ranging review of racial or economic discrimination.
- In developing an EA where a FONSI is expected it is not necessary to undertake an EJ analysis unless special circumstances warrant the review. Special circumstances arise only where the proposed action has a clear potential for off-site impacts to minority and low-income communities associated with the proposed action. In that case, an appropriate review may be needed to provide a basis for concluding that there are no unique environmental impacts on low-income or minority communities that would be significant.
- EJ-related issues normally are not considered during the preparation of generic or programmatic EISs. In general, EJ-related issues, if any, will differ from site to site and, thus, do not lend themselves to generic resolutions. Consequently, EJ, as well as other socioeconomic issues, are considered in site-specific EISs.
- EJ per se" is not a litigable issue in NRC proceedings. Rather the NRC's obligation is to assess the proposed action for significant impacts to the physical or human environment. Contentions must be made in the NEPA context, must focus on compliance with NEPA, and must be adequately supported as required by 10 CFR Part 2 to be admitted for litigation.
- The methods used to define the geographic area for assessment and to identify low-income and minority communities should be clear, yet allow for enough flexibility that communities or transient populations that will bear significant adverse effects are not overlooked during the NEPA review. Therefore, in determining the geographic area for assessment and in identifying minority and low-income communities in the impacted area, standard distances and population percentages should be used as guidance, supplemented by the EIS scoping process, to determine the presence of a minority or low-income population.
- The assessment of disparate impacts is on minority and low-income populations in general and not to the "vaguely defined, shifting "subgroups" within that community." *See PFS*, CLI–02–20, 56 NRC at 156.
- In performing a NEPA analysis for an EIS, published demographic data, community interviews and public input through well-noticed public scoping meetings should be used in identifying minority and low-income communities that may be subject to adverse environmental impacts.

Dated at Rockville, Maryland, this 18th day of August, 2004.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 04–19305 Filed 8–23–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETING: Nuclear Regulartory Commission.

DATE: Weeks of August 23, 30, September 6, 13, 20, 27, 2004.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

MATTERS TO BE CONSIDERED:

Week of August 23, 2004

There are no meetings scheduled for the Week of August 23, 2004.

Week of August 30, 2004—Tentative

There are no meetings scheduled for the Week of August 30, 2004.

Week of September 6, 2004—Tentative

Wednesday, September 8, 2004.
9:30 a.m. Discussion of Office of Investigations (OI) Programs and Investigations (Closed—Ex. 7).
2:00 p.m. Discussion of Intragovernmental Issues (Closed-Ex. 1 & 9).

Week of September 13, 2004—Tentative

Wednesday, September 15, 2004.
9:30 a.m. Discussion of Security Issues (Closed-Ex. 1).

Week of September 20, 2004—Tentative

There are no meetings scheduled for the Week of September 20, 2004.

Week of September 27, 2004—Tentative

There are no meetings scheduled for the Week of September 27, 2004.

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Dave Gameroni, (301) 415–1651.

* * * * *

Additional Information

By a vote of 3–0 on August 17, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Affirmation of Tennessee Valley Authority (Watts Bar Nuclear Plant, Unit 1, Sequoyah, Nuclear Plant, Units 1 & 2, Browns Ferry Nuclear Plant, Units 1, 2 & 3), Docket Nos. 50–390–CivP, 50–327–CivP, 50–260–CivP, 50–296–CivP; LBP–03–10 (6/26/03)" be held August 18, and on less than one week's notice to the public.

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The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html*

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The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participation in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify the NRC's Disability Program Coordinator, August Spector, at 301–415–7080, TDD: 301–415–2100, or by e-mail at *aks@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov*.

Dated: August 19, 2004.

Dave Gamberoni,

Office of the Secretary.

[FR Doc. 04–19402 Filed 8–20–04; 9:35 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application of Lions Gate Entertainment Corp., To Withdraw Its Common Stock, No Par Value, From Listing and Registration on the American Stock Exchange LLC File No. 1–14880

August 18, 2004.

On August 6, 2004, Lions Gate Entertainment Corp., a British Columbia corporation ("Issuer"), filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its common stock, no par value, ("Security"), from listing and registration on the American Stock Exchange LLC ("Amex" or "Exchange").

The Board of Directors of the Issuer ("Board") approved a resolution on August 5, 2004 to withdraw the Issuer's Security from listing on the Amex, and to list the Security on the New York Stock Exchange, Inc. ("NYSE"). The Board states that, as of August 9, 2004, the Security began trading on the NYSE. The Board states the reason for delisting its Security from the Amex and listing on the NYSE is based on the Issuer's belief that the NYSE was a more appropriate trading market for the Security given the increase in the Issuer's size and market capitalization over the last year.

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in British Columbia, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Issuer's application relates solely to the withdrawal of the Security from listing on the Amex, and shall not affect its continued listing on the NYSE or its obligation to be registered under Section 12(b) of the Act.[3]

Any interested person may, on or before September 10, 2004, comment on the facts bearing upon whether the application has been made in accordance with the rules of the Amex, and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

Electronic Comments

- Send an e-mail to *rule-comments@sec.gov*. Please include the File Number 1–14880 or;

Paper Comments

- Send paper Comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number 1–14880. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/delist.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. E4–1887 Filed 8–23–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50211; File No. 4–429]

Joint Industry Plan; Notice of Filing of Amendment No. 13 to the Options Intermarket Linkage Plan Regarding Natural Size

August 18, 2004.

Pursuant to Section 11A of the Securities Exchange Act of 1934 (the "Act")[1] and Rule 11Aa3–2 thereunder,[2] notice is hereby given that on May 10, 2004, May 11, 2004, June 22, 2004, July 21, 2004, August 12, 2004, and August 16, 2004, the International Securities Exchange LLC ("ISE"), Chicago Board Options Exchange, Inc. ("CBOE"), American Stock Exchange LLC ("Amex"), Pacific Exchange, Inc. ("PCX"), Philadelphia Stock Exchange, Inc. ("Phlx"), and Boston Stock Exchange, Inc. ("BSE") (collectively the "Participants") respectively submitted to the Securities and Exchange Commission ("Commission") Amendment No. 13 to the Plan for the Purpose of Creating and Operating an Intermarket Options Linkage (the "Linkage Plan").[3] The amendment proposes to modify the definitions of Firm Customer Quote Size ("FCQS") and Firm Principal Quote Size ("FPQS").[4] The Commission is publishing this notice to solicit comments from interested persons on the proposed Linkage Plan amendment.

I. Description and Purpose of the Amendment

The Participants propose to modify the definitions of FCQS and FPQS to accommodate the "natural size" of quotations. The Linkage Plan currently requires that the Participants be firm for both Principal Acting as Agent and Principal Orders for at least 10 contracts. The proposed Amendment would permit exchanges to be firm for the actual size of their quotation, even if this amount is less than 10 contracts.

The Participants represent that they adopted the "10-up" requirement for the Linkage Plan at a time when all the Participants had rules requiring that their quotations be firm for customer orders for at least 10 contracts. The Participants further represent that they either have amended, or are in the process of amending, such rules. Therefore, the Participants are seeking to conform the quotation requirements for incoming Linkage Orders to be consistent with the quotation requirements for other orders.

Specifically, the proposed Amendment seeks to change to the definitions of both FCQS and FPQS. While the proposed Amendment would maintain a general requirement that the FCQS and FPQS be at least 10 contracts, that requirement would not apply if a Participant were disseminating a quotation of fewer than 10 contracts. In that case, the Participant may establish a FCQS or FPQS equal to its disseminated size.

As with Linkage orders today, if the order is of a size eligible for automatic execution at both the sending and receiving exchanges, the receiving exchange must provide an automated execution of the Linkage order. If this is not the case (for example, the receiving exchange's auto-ex system is not engaged), the receiving exchange may allow the order to drop to manual handling. However, the receiving exchange still must provide a manual execution for at least the FCQS or FPQS, as appropriate (in this case, the size of its disseminated quotation of less than 10 contracts).

II. Implementation of the Plan Amendment

The Participants intend to make the proposed amendment to the Linkage Plan reflected in this filing effective when the Commission approves the amendment.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an E-mail to *rule-comments@sec.gov*. Please include File Number 4–429 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number 4–429. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal offices of the Amex, BSE, CBOE, ISE, PCX and Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number 4–429 and should be submitted on or before September 14, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E4–1889 Filed 8–23–04; 8:45 am]

BILLING CODE 8010–01–P

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[4] 17 CFR 200.30–3(a)(1).

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 240.11Aa3–2.

[3] On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket options market linkage proposed by the Amex, CBOE, and ISE. *See* Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). Subsequently, upon separate requests by the Phlx, PCX, and BSE, the Commission issued orders to permit these exchanges to participate in the Linkage Plan. *See* Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70850 (November 28, 2000), 43574 (November 16, 2000), 65 FR 70851 (November 28, 2000) and 49198 (February 5, 2004), 69 FR 7029 (February 12, 2004).

[4] Sections 2 (11) and (12) of the Linkage Plan.

[5] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[[Release No. 34–50214; File No. SR-Amex-2004–49]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Approval to Proposed Rule Change To Allow Amex Hearing Officers To Preside Over Default and Settlement Proceedings Without Empanelling Members of the Hearing Board To Serve on an Amex Disciplinary Panel

August 18, 2004.

On June 28, 2004, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Section 1(b)9 of article V of the Amex Constitution, and Rule 2(b) of the Amex Rules of Procedure in Disciplinary Matters, to allow Amex hearing officers to preside over default and settlement proceedings without empanelling members of the Hearing Board to serve on an Amex Disciplinary Panel. The proposed rule change was published for comment in the **Federal Register** on July 15, 2004.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[4] and, in particular, the requirements of Section 6(b) of the Act,[5] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 6(b)(7) of the Act,[6] in that it is designed to provide a fair and efficient procedure for the disciplining of members and persons associated with members. Moreover, the Commission finds the proposed rule change furthers the objectives of Section 6(b)(5) of the Act[7] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR-Amex-2004–49) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E4–1893 Filed 8–23–04; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 49991 (July 9, 2004), 69 FR 42472.

[4] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(7).

[7] 15 U.S.C. 78f(b)(5).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50212; File No. SR–CBOE–2004–55]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. To Incorporate Electronic DPMs

August 18, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 3, 2004, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the CBOE. The CBOE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the CBOE under Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend its marketing fee to incorporate newly established electronic DPMs ("e-DPMs") as part of the existing marketing fee.[5] Below is the text of the proposed rule change. Proposed new language is *italicized.*

CHICAGO BOARD OPTIONS EXCHANGE, INC. FEE SCHEDULE

1. No Change.

2. MARKET MAKER, *e-DPM* & DPM MARKETING FEE (in option classes in which a DPM has been appointed) (6) $.40

3.–4. No Change.

Notes:

(1)–(5) No Change.

(6) The Marketing Fee will be assessed only on transactions of Market-Makers, *e-DPMs* and DPMs resulting from customer orders from payment accepting firms with which the DPM has agreed to pay for that firm's order flow, and with respect to orders from customers that are for 200 contracts or less.

(7)–(13) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for its proposal and discussed any comments it had received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Effective June 1, 2003, the Exchange reinstated its marketing fee program in order for the CBOE to compete with other markets in attracting options order flow in multiply traded options from firms that include payment as a factor in their order routing decisions in designated classes of options.[6] The Exchange proposes to incorporate e-DPMs in the existing marketing fee program. The CBOE states that, in all other respects, the marketing fee

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] On July 12, 2004, the Commission approved the establishment of e-DPMs. *See* Securities Exchange Act Release No. 50003 (July 12, 2004), 69 FR 43028 (July 19, 2004) (SR–CBOE–2004–24).

[6] *See* Securities Exchange Act Release No. 47948 (May 30, 2003), 68 FR 33749 (June 5, 2003) (SR–CBOE–2003–19).

program would continue to function and operate in the same manner as the existing marketing fee program.[7]

The Exchange would impose the fee at a rate of $.40 per contract on Market-Maker transactions, including DPMs and e-DPMs, in all classes of options in which a DPM has been appointed, as described below. According to the CBOE, this program, like the CBOE's prior marketing fee program, provides for the equitable allocation of a reasonable fee among the CBOE's members and is designed to enable the CBOE to compete with other markets in attracting options order flow in multiply traded options from firms that include payment as a factor in their order routing decisions in designated classes of options. The CBOE proposes that the marketing fee be assessed only on those Market-Maker, DPM, and e-DPM transactions resulting from orders from customers of payment accepting firms ("payment accepting firms") with which the DPM has agreed to pay for that firm's order flow.

The Exchange states that it would not have any role with respect to the negotiations between DPMs and payment accepting firms on the amount of the payment, including which payment accepting firms DPMs negotiate with to send their order flow to CBOE and the amount of the payment. Rather, the Exchange proposes to facilitate payment to payment accepting firms from fees collected from Market-Makers, e-DPMs, and DPMs. In those classes for which a DPM has advised the Exchange that it has negotiated with a payment accepting firm to pay for that firm's order flow, the Exchange would provide administrative support for the program. Specifically, the Exchange would keep track of the number of qualified orders each payment accepting firm directs to the Exchange, and would make the necessary debits and credits to the accounts of the DPMs, e-DPMs, Market-Makers, and the payment accepting firms to reflect the payments that are to be made. The Exchange represents that all of the funds generated by the fee would be used only to pay the firms for the order flow sent to the Exchange.

The Exchange believes that the $.40 per contract is an equitable allocation of a reasonable fee among the CBOE's members. The CBOE states that it has designed this program to enable it to compete with other markets in attracting options order flow in multiply traded options. If a DPM advises the Exchange that it has negotiated a lower amount, the Exchange would refund to Market-Makers, e-DPMs, and DPMs the excess fee collected.

The CBOE proposes that the marketing fee be assessed only on transactions of Market-Makers (including e-DPMs and DPMs) resulting from orders for 200 contracts or less from customers of payment accepting firms. In the CBOE's view, because the marketing fee will be passed through to only those Market-Makers' transactions resulting from orders from customers of a payment accepting firm that the DPM has independently negotiated with to pay for that firm's order flow, there will be a direct and fair correlation between those members who pay the costs of the marketing program funded by the fee and those who receive the benefits of the program.

According to the CBOE, it is important to note that although Market-Maker, DPM, and e-DPM transactions resulting from customer orders from firms that do not accept payment for their orders are not subject to the fee, Exchange Market-Makers, DPMs, and e-DPMs will have no way of identifying prior to execution whether a particular order is from a payment-accepting firm, or from a firm that does not accept payment for their order flow.[8]

2. Statutory Basis

The CBOE believes that because this marketing fee will serve to enhance the competitiveness of the Exchange and its members, this proposal is consistent with and furthers the objectives of the Act, including specifically Section 6(b)(5) thereof,[9] which requires the rules of exchanges to be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and Section 11A(a)(1) thereof,[10] which reflects the finding of Congress that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure fair competition among brokers and dealers and among exchange markets. The Exchange also believes that the proposed rule change is consistent with Section 6(b) of the Act,[11] and furthers the objectives of Section 6(b)(4) of the Act[12] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among the CBOE's members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The CBOE neither solicited nor received written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[13] and subparagraph (f) of Rule 19b-4 thereunder.[14] At any time within 60 days after the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2004–55 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–CBOE–2004–55. This file

[7] *Id.*

[8] The Exchange has reinstated, in Interpretation and Policy .12 to CBOE Rule 8.7, the Marketing Fee Voting Procedures as a six-month pilot program by which a trading crowd may determine whether or not to participate in the Exchange's marketing fee program and to include e-DPMs into the Marketing Fee Voting Procedures. *See* Securities Exchange Act Release No. 50130 (July 30, 2004), 69 FR 47965 (August 6, 2004) (SR–CBOE–2004–47).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78k–1(a)(1).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4).

[13] 15 U.S.C. 78s(b)(3)(A)(ii).

[14] 17 CFR 240.19b–4(f).

number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2004–55 and should be submitted on or before September 14, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E4–1890 Filed 8–23–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXHANGE COMMISSION

[Release No. 34–50209; File No. SR–CBOE–2004–43]

Self Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval to Proposed Rule Change and Amendment No. 1 Thereto To Amend the Exchange's Membership Rules To Accommodate e-DPMs

August 18, 2004.

On July 12, 2004, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its Chapter III membership rules to accommodate a new category of CBOE market-making participant—electronic Designated Primary Market-Makers ("e-DPMs"). On July 12, 2004, the CBOE filed Amendment No. 1 to the proposed rule change.[3]

The proposed rule change, as amended, was published for comment in the **Federal Register** on July 19, 2004.[4] The Commission received no comments on the proposal.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[5] and, in particular, the requirements of Section 6 of the Act[6] and the rules and regulations thereunder. The Commission specifically finds that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act[7] in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

In particular, the Commission believes that the CBOE's proposed amendment to CBOE Rule 3.8(a)(ii) to allow a member organization acting as an e-DPM to have one individual be the nominee for multiple memberships that are designated for use in an e-DPM capacity would not be inappropriate given that e-DPMs operate from locations outside of the trading crowds for their applicable option classes, thereby making it possible for a member to act as an nominee on more than one membership.[8] The Commission notes, however, that such individual cannot be the designated nominee for any of the organization's other memberships in any other market making capacity other than that of an e-DPM.

The Commission further believes that the CBOE's proposal to change the reference to "floor functions" in CBOE Rules 3.2, 3.8, and 3.9 to "trading functions" should help to clarify the applicability of these rules to e-DPMs, who would not necessarily have a floor presence.[9] In addition, Commission believes that the proposed amendment to CBOE Rule 3.2 to clarify that a member is deemed to have an authorized "trading function" if the member is approved by the CBOE's Membership Committee to act as a nominee or person registered for an e-DPM organization should help to ensure that e-DPMs, like other Market-Makers and CBOE Floor Brokers, would be required to comply with the CBOE Rule 3.9(g) member orientation and qualification exam requirements. Lastly, the Commission notes that the CBOE's proposed Rule 3.28 requirement that e-DPMs provide the Exchange with a letter of guarantee from a clearing member is similar to ISE Rule 808 and PCX Rule 6.36(a) requirements, previously approved by the Commission.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–CBOE–2004–43) and Amendment No. 1 thereto be approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–1892 Filed 8–23–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50215; File No. SR–CHX–2004–14]

Self-Regulatory Organizations; The Chicago Stock Exchange, Incorporated; Order Granting Approval to Proposed Rule Change Relating to the Handling of Preopening Orders in Nasdaq/NM Securities

August 18, 2004.

On May 19, 2004, The Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from David Doherty, Attorney, Legal Division, CBOE, to Deborah Flynn, Assistant Director, Division of Market Regulation, Commission, dated July 12, 2004 ("Amendment No. 1").

[4] *See* Securities Exchange Act Release No. 50007 (July 13, 2004), 69 FR 43034.

[5] In approving this proposed rule change, as amended, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 6 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5).

[8] The Commission notes that it would not be possible for an in-crowd market participant to act as nominee on more than one membership because such participant would be unable to physically be present in more than one trading crowd.

[9] The Commission notes that it is possible for e-DPMs to stream quotes into the Exchange from locations on the trading floor other than the trading crowds where their allocated option classes are traded. In addition, for an 18-month period, e-DPMs are permitted to have no more than one Market-Maker affiliated with the e-DPM to trade on the trading floor in any specific options classes allocated to the e-DPM. CBOE Rule 8.93(vii).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the manner in which it handles preopening orders in Nasdaq/NM securities, to eliminate the distinction in the treatment of orders received at or before 8:20 a.m. and those received after 8:20 a.m. (Central Time) until the opening of trading. The proposed rule change was published for comment in the **Federal Register** on July 14, 2004.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[4] and, in particular, the requirements of Section 6 of the Act[5] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 6(b)(5) of the Act,[6] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[7], that the proposed rule change (SR–CHX–2004–14) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E4–1894 Filed 8–23–04; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 49978 (July 7. 2004), 69 FR 42231.

[4] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5)

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50208; File No. SR–ISE–2004–19]

Self-Regulatory Organizations; Order Granting Approval to a Proposed Rule Change and Amendment No. 1 Thereto by the International Securities Exchange, Inc. Relating to the Entry of Electronically Generated Orders

August 17, 2004.

On May 27, 2004, the International Securities Exchange, Inc. ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend ISE Rule 717(f) to allow Electronic Access Members ("EAMs") to enter electronically generated and communicated market orders, immediate-or-cancel limit orders, and fill-or-kill limit orders. On June 30, 2004, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The proposed rule change and Amendment No. 1 were published for comment in the **Federal Register** on July 8, 2004.[4] The Commission received no comments on the proposal, as amended. This order approves the proposed rule change, as amended.

ISE Rule 717(f) limits the ability of EAMs to enter orders that are generated and communicated electronically. In its amended proposal, the Exchange represented that one purpose of this restriction is to prohibit non-market makers from effectively making markets on the Exchange using automated systems that place and cancel orders in a manner that is similar to quoting.[5] Further, the Exchange represented that, as a general matter, it continues to believe that maintaining the prohibition on electronically generated orders is important to prevent EAMs from acting like market makers without also being subject to the responsibilities of market makers. However, the Exchange represented that it believes that market orders, immediate-or-cancel limit orders, and fill-or-kill limit orders, which are not eligible to rest on the limit order book, do not present the same "market making" potential as resting limit orders. Accordingly, the Exchange proposed to amend ISE Rule 717(f) to permit EAMs to enter electronically generated market orders, immediate-or-cancel limit orders, and fill-or-kill limit orders.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[6] and, in particular, the requirements of Section 6(b)(5) of the Act,[7] because it is designed to remove impediments to and perfect the mechanism of a free and open market and national market system and, in general, to protect investors and the public interest. Specifically, the Commission finds that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act[8] because it should benefit investors by allowing EAMs to electronically generate additional types of orders for their own account and for the accounts of investors whose orders they represent. The Commission believes that this should allow for greater speed and efficiency while continuing to satisfy the Exchange's desire to prevent EAMs from effectively making markets on the Exchange using automated systems that place and cancel orders in a manner that is similar to quoting.[9]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (File No. SR–ISE–2004–19), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–1891 Filed 8–23–04; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Michael J. Simon, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated June 29, 2004 ("Amendment No. 1").

[4] *See* Securities Exchange Act Release No. 49956 (July 1, 2004), 69 FR 41320.

[5] *See id.*

[6] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5).

[8] *Id.*

[9] In addition, the Commission notes that it recently approved a similar proposal by the Philadelphia Stock Exchange, Inc. to lift restrictions on electronically generated orders. *See* Securities Exchange Act Release No. 48648 (October 16, 2003) 68 FR 60762 (October 23, 2003) (approving SR–Phlx–2003–37).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50218; File No. SR–NASD–2004–002]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 Thereto To Require an NASD Market Participant To Provide Written Notice Before Denying Any NASD Member Direct Electronic Access to Its Quote in the ADF

August 18, 2004.

I. Introduction

On January 8, 2004, the National Association of Securities Dealers, Inc. ("NASD") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NASD Rule 4300A to require an NASD Market Participant to provide written notice before denying any NASD member direct electronic access to its quote on NASD's Alternative Display Facility ("ADF"). NASD filed Amendment No. 1 to the proposed rule change on February 5, 2004.[3] The proposed rule change and Amendment No. 1 were published for comment in the **Federal Register** on February 24, 2004.[4] The Commission received no comment letters on the proposed rule change and Amendment No. 1. NASD filed Amendment No. 2 to the proposed rule change on July 14, 2004.[5] This order approves the proposed rule change and Amendment No. 1 and issues notice of filing of, and approves on an accelerated basis, Amendment No. 2.

II. Description of the Proposal

The ADF is a pilot system that NASD operates for its members that choose to quote or effect trades in Nasdaq securities otherwise than on the Nasdaq Stock Market or an exchange.[6] The Commission conditioned its approval of the SuperMontage facility on NASD's establishment of the ADF.[7] In the SuperMontage proposal, several commenters expressed concern that SuperMontage would become the only execution system through which substantially all displayed trading interest in the over-the-counter markets could be reached. In response to these concerns, NASD agreed to provide an alternative quotation and transaction reporting facility (now known as the ADF) that would, in effect, make participation in SuperMontage voluntary.[8] The ADF permits NASD members to comply with their obligations under Commission and NASD rules (including Rule 11Ac1–1(c)(5) under the Exchange Act [9] and Regulation ATS [10]) without participating in SuperMontage. NASD's authority to operate the ADF pilot system extends until October 26, 2004.[11]

The ADF does not have an order-routing capability. Instead, an NASD Market Participant must provide other NASD Market Participants with direct electronic access to its quote in the ADF.[12] In addition, an NASD Market Participant must provide NASD member broker-dealers that are not NASD Market Participants direct electronic access, if requested, and allow for indirect electronic access to its ADF quote.[13] An NASD Market Participant is prohibited from in any way directly or indirectly influencing or prescribing the prices that its customer broker-dealer may choose to impose for providing indirect access and precluding or discouraging indirect electronic access, including through the imposition of discriminatory pricing or quality of service with regard to a broker-dealer that is providing indirect electronic access.[14] However, an NASD Market Participant that is an electronic communication network ("ECN") may lawfully deny access to its ADF quote in the limited circumstances where a broker-dealer fails to pay contractually obligated costs to the ECN.

NASD proposes to amend NASD Rule 4300A to require an NASD Market Participant to provide written notice before denying any NASD member direct electronic access to its ADF quotes. The NASD Market Participant would be required to provide this notice to ADF Market Operations via facsimile, personal delivery, courier, or overnight mail at least 14 calendar days in advance of denying access. The 14-day period would begin on the first business day that ADF Market Operations has receipt of the notice. In Amendment No. 1, NASD stated that, to ensure proper documentation of compliance with this rule, NASD members should maintain evidence of receipt of the notice (*e.g.*, dated facsimile confirmation, receipt from a courier, *etc.*). ADF Market Operations would then post this notice on the ADF webpage to ensure that members have adequate time to make other routing or access arrangements, as necessary.

In Amendment No. 2, NASD added a provision that a notice provided under the proposed rule must be based on the good faith belief of an NASD Market Participant that its denial of access is appropriate and does not violate any NASD rules or the federal securities laws. NASD also added that the proposed notification and publication of an NASD Market Participant's intent to deny access would have no bearing on the merits of any claim between the NASD Market Participant and any affected broker-dealers, nor would it insulate the NASD Market Participant from liability for violations of NASD rules or the federal securities laws, such as Rule 11Ac1–1 under the Act,[15] should it be determined that the denial of access was inappropriate. In Amendment No. 2, NASD stated that, if NASD believes that an NASD Market

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Barbara Z. Sweeney, Senior Vice President and Corporate Secretary, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated February 4, 2004 ("Amendment No. 1").

[4] *See* Securities Exchange Act Release No. 49252 (February 13, 2004), 69 FR 8505.

[5] *See* letter from Patricia M. Albrecht, Assistant General Counsel, NASD, to Katherine A. England, Assistant Director, Division, Commission, dated July 13, 2004 ("Amendment No. 2").

[6] *See* Securities Exchange Act Release No. 46249 (July 24, 2002), 67 FR 49821 (July 31, 2002) (approving the ADF pilot).

[7] *See* Securities Exchange Act Release No. 43863 (January 19, 2001), 66 FR 8020 (January 26, 2001) (approving SuperMontage).

[8] *See* 66 FR at 8024.

[9] 17 CFR 240.11Ac1–1(c)(5).

[10] 17 CFR 242.300 *et seq.*

[11] *See* Securities Exchange Act Release No. 49131 (January 27, 2004), 69 FR 5229 (February 3, 2004) (extending the ADF pilot).

[12] *See* NASD Rule 4300A(a)(1). "Direct electronic access" is defined as the ability to deliver an order for execution directly against an individual NASD Market Participant's best bid and offer subject to quote and order access obligations without the need for voice communication, with the equivalent speed, reliability, availability, and cost (as permissible under the federal securities laws, the rules and regulations thereunder, and NASD Rules), as are made available to NASD Market Participant's own customer broker-dealers or other active customers or subscribers. *See* NASD Rule 4300A(d)(2).

[13] *See* NASD Rule 4300(a)(2). "Indirect electronic access" is defined as the ability to route an order through customer broker-dealers of an NASD Market Participant that are not affiliates of the NASD Market Participant, for execution against NASD Market Participant's best bid and offer subject to quote and order access obligations, without the need for voice communication, with equivalent speed, reliability, availability, and cost, as are made available to the Market Participant's customer broker-dealer providing the indirect access or other active customers or subscribers. *See* NASD Rule 4300A(d)(3).

[14] *See* NASD Rule 4300(a)(2).

[15] 17 CFR 240.11Ac1–1.

Participant has improperly denied a broker-dealer access to its quotes, the NASD Market Participant would not have met the terms of Rule 4300A and therefore would be in violation of that provision and would not be permitted to continue quoting on the ADF. Amendment No. 2 also clarified that ECNs are the only NASD Market Participants that may lawfully deny access to their quotes, and that an ECN may do so only in the limited circumstances where a broker-dealer fails to pay contractually obligated costs.

Finally, in Amendment No. 2, NASD revised the proposal to remove the requirement that an NASD Market Participant provide notice with respect to a denial of *indirect* access. An NASD Market Participant is not permitted to look through its order flow to identify or discriminate against a source of the order flow via indirect access; therefore, the revised proposal no longer contemplates provision of notice for denials of indirect access.

The text of the proposed rule change, as amended by Amendment Nos. 1 and 2, appears below. Proposed new language is in italics. Proposed deletions are in brackets.

4300A. Quote and Order Access Requirements

(a) To ensure that NASD Market Participants comply with their quote and order access obligations as defined below, for each security in which they elect to display a bid and offer (for Registered Reporting ADF Market Makers), or a bid and/or offer (for Registered Reporting ADF ECNs), in the Alternative Display Facility, NASD Market Participants must:

(1) through (2) No change.

(3) Provide at least 14 calendar days advance written notice, via facsimile, personal delivery, courier or overnight mail, to NASD Alternative Display Facility Operations before denying any NASD member direct electronic access as defined below. An ECN is the only Market Participant that may lawfully deny access to its quotes, and an ECN may only do so in the limited circumstance where a broker-dealer fails to pay contractually obligated costs for access to the ECN's quotes. The notice provided hereunder must be based on the good faith belief of a Market Participant that such denial of access is appropriate and does not violate any of the Market Participant's obligations under NASD rules or the federal securities laws. Further, any notification or publication of a Market Participant's intent to deny access will have no bearing on the merits of any claim between the Market Participant and any affected broker-dealer, nor will it insulate the Market Participant from liability for violations of NASD rules or the federal securities laws, such as SEC Rule 11Ac1–1. The 14-day period begins on the first business day that NASD Alternative Display Facility Operations has receipt of the notice.

(4) [3] Share equally the costs of providing to each other the direct electronic access required pursuant to paragraph (a)(1), unless those Market Participants agree upon another cost-sharing arrangement.

(b) through (f) No change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2, including whether it is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2004–002 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NASD–2004–002. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2004–002 and should be submitted on or before September 14, 2004.

IV. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities association,[16] particularly section 15A(b)(6) of the Act.[17] Section 15A(b)(6) requires, among other things, that a national securities association'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 proposed rule change should allow NASD to provide its members advance notice of when an NASD Market Participant intends to deny an NASD member access to its quotes so as to minimize any potential disruptions in the ADF market. NASD has indicated that an NASD Market Participant recently denied an NASD member access to the NASD Market Participant's quotes for allegedly failing to pay contractually obligated costs. NASD stated that this denial of access disrupted trading not only for the NASD member that was denied access, but also for other NASD members that indirectly accessed the NASD Market Participant's quote through the NASD member that was denied direct access. NASD believes that, although there were other means in place by which NASD members could have accessed the NASD Market Participant's quotes, the absence of any advance notice of the denial of access caused confusion in the marketplace as members considered how best to access the NASD Market Participant's quotes by other means. The Commission believes that the proposed rule change should help avert such disruption by providing NASD members advance notice of potential denials of direct access, thereby affording them an opportunity to make other routing or access arrangements.

The Commission further believes that it is reasonable and consistent with the Act for the new provisions of NASD Rule 4300A(a)(3) to state that any

[16] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 15 U.S.C. 78*o*–3(b)(6).

notification or publication of an NASD Market Participant's intent to deny access will have no bearing on the merits of any claim between the NASD Market Participant and any affected broker-dealer, nor will it insulate the NASD Market Participant from potential liability for violations of NASD rules or the federal securities laws. The Commission believes that the mere act of providing notice of a denial of access pursuant to this rule change should not insulate an NASD Market Participant from liability if that denial of access were illegal.

The Commission finds good cause for accelerating approval of Amendment No. 2 prior to the thirtieth day after publication in the **Federal Register**. The Commission notes that the proposed rule change and Amendment No. 1 thereto were noticed for the full comment period and that no comments were received. Amendment No. 2 clarifies the proposal and provides that compliance with the proposed rule would not bear on the merits of any claim between an NASD Market Participant and any affected broker-dealer, nor would it shield an NASD Market Participant from liability for a violation of NASD rules or federal securities laws. Furthermore, accelerated approval should permit NASD to promptly begin to receive notices for any potential denials of access, thereby enabling NASD to investigate any denial of access while providing notice of such denials to NASD members to minimize any potential disruptions in the ADF market that could result. For these reasons, the Commission finds good cause exists, consistent with sections 15A(b)[18] and 19(b)(2) of the Act,[19] to approve Amendment No. 2 on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[20] that the proposed rule change (SR–NASD–2004–002) and Amendment No. 1 is hereby approved, and that Amendment No. 2 is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E4–1888 Filed 8–23–04; 8:45 am]

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[18] 15 U.S.C. 78*o*–3(b).

[19] 15 U.S.C. 78s(b)(2).

[20] *Id.*

[21] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2004–18925]

Airport Improvement Program Grant Assurances; Proposed Modifications and Opportunity To Comment

AGENCY: Federal Aviation Administration (FAA), U.S. DOT.

ACTION: Notice of modification of Airport Improvement Program grant assurances and of the opportunity to comment.

SUMMARY: The FAA proposes to modify the standard grant assurances that are required of a sponsor before receiving a grant under the Airport Improvement Program (AIP). Pursuant to applicable law, the Secretary of Transportation is required to provide notice in the **Federal Register** and to provide an opportunity for public comment on proposals to modify the assurances and on proposals for additional AIP assurances.

Modifications to the AIP grant assurances are primarily being made to remove grant assurances that govern the application and implementation of an AIP project that expires with the completion of the project and place them as grant agreement conditions or as certifications as part of the application process. Minor technical edits for clarification of certain assurances are also being proposed. Also, a new assurance is being proposed regarding the statutory requirement for Disadvantaged Business Enterprise (DBE) participation in airport concessions. Previously this requirement was incorporated by reference. Finally, two new assurances are being proposed as required by Vision 100—Century of Aviation Reauthorization Act, (Public Law (P.L.) 108–176).

The FAA also believes that it is appropriate to review and revalidate the need for all of the assurances given the dynamic nature of airport operations, needs and economics. Although the assurances are generally verbatim restatements of current law, FAA believes it would be most helpful for the public to assist FAA in this review by soliciting comments about all of the assurances. Most assurances, if the need for deletion or change is justified, will require statutory change. FAA may use the public comments to justify future requests by the agency for statutory changes.

DATES: Comments must be submitted on or before 30 calendar days following publication in the **Federal Register**. Any necessary or appropriate revision to the assurances resulting from the comments received will be adopted as of the date of a subsequent publication in the **Federal Register**. Finally, comments may be provided on the project-related assurances and certifications FAA is proposing to convert into grant conditions or certificates as listed in the table below. FAA anticipated the wording of the future grant conditions/certifications, which can be found at *http://www.faa.gov/arp/pdf/assrnap.pdf*, will be unchanged except to the extent that some minor changes may be made due to the new context for these conditions/certifications.

ADDRESSES: Comments may be delivered or mailed to the FAA, Airports Financial Assistance Division, APP–500, Attn: Mr. Kendall Ball, Room 619, 800 Independence Ave., SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Mr. Kendall Ball, Airport Improvement Program Branch, APP 520, Airports Financial Assistance Division, Room 619, FAA, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–7436.

SUPPLEMENTARY INFORMATION: The Secretary must receive certain assurances from a sponsor (applicant) seeking financial assistance for airport planning, airport development, noise compatibility planning or noise mitigation under Title 49, U.S.C., as amended. These assurances are submitted as part of a sponsor's application for Federal assistance and are incorporated into all grant agreements. As need dictates, these assurances are modified to reflect new Federal requirements. Notice of such proposed modifications is published in the **Federal Register**, and an opportunity for public comment is provided.

The current assurances were published on February 3, 1988, at 53 FR 3104 and amended on September 6, 1988, at 53 FR 34361; on August 29, 1989, at 54 FR 35748; on June 10, 1994 at 59 FR 30076; on January 4, 1995, at 60 FR 521; on June 2, 1997, at 62 FR 29761; and on August 18, 1999, at 64 FR 45008.

Discussion of Modifications

In the past, FAA used four separate sets of standard assurances: Airport Sponsors (owners/operators), Planning Agency Sponsors, Non-Airport Sponsors Undertaking Noise Compatibility Program Projects (hereinafter referred to as Non-Airport Sponsor Assurances), and State Assurances (for the Block

Grant Program). Moreover, we included requirements for carrying out AIP-funded projects as general grant assurances. From time to time, this approach has led to confusion over the application of these requirements to projects completed without AIP support. FAA is modifying the assurances currently in effect to incorporate the changes noted below.

To simplify the discussion, the modifications are shown in a table format for comparison with existing assurances, which can be found at *http://www.faa.gov/arp/pdf/assrnap.pdf.* The disposition of each assurance will be shown as: (a) Retention as an assurance with its proposed new assurance number; (b) conversion to a certification to be included with the application for Federal Assistance (Standard Form 424); or (c) conversion to a grant condition. Project related assurances will be converted to certifications or grant conditions. This change in approach will clarify those grant requirements that are both project specific and expire upon the completion of the project. This notice is not intended to change the manner in which grant agreement obligations are enforced.

For the most part, assurances that are proposed for retention are incorporated without change, however, there are some instances of wording modifications for clarity that are noted in the table.

As a result of this proposed change, the assurances for Planning Agency Sponsors and those for Non-Airport Undertaking Noise Compatibility Program Projects will be eliminated and incorporated either as grant application certifications or grant conditions since all of the assurances are effective only for the duration of the projects. In addition, two new assurances are added at the end as a result of the recently enacted Public Law 108–176 and another assurance was added in full text that was previously incorporated by reference. Finally, old assurance number 31 (proposed new assurance c. 15) is changed to reflect section 164 of Public Law 108–176, which permitted expanded use of revenue from sale of land purchased for noise compatibility purposes.

Assurance number	Title	Disposition
A.	General	Retained as A. General, with minor addition of block grant states in par. 1.
B.	Duration and Applicability	Retained as B. Duration and Applicability with elimination of par. 3.
C. 1.	General Federal Requirements	Conversion to grant condition, new assurance for the DBE concession requirement.
2.	Responsibility and Authority of the Sponsor.	Conversion to application certification.
3.	Sponsor Fund Availability	Conversion to application certification.
4.	Good Title	Conversion to application certification; clarification added to assurance c. 1 (see old assurance no. 5 immediately below).
5.	Preserving Rights and Powers	Retained as assurance c. 1; clarifying change in subparagraph (b) to include reference to Good Title; delete provisions related to nonairport local governments' receiving funding for noise compatibility projects under former 5(c).
6.	Consistency with Local Plans	Conversion to application certification.
7.	Consideration of Local Interest	Conversion to application certification.
8.	Consultation with Users	Conversion to application certification.
9.	Public Hearings	Conversion to application certification.
10.	Air and Water quality Standards	Eliminated by P.L 108–176.
11.	Pavement Preventive Maintenance	Retained as assurance c.2.
12.	Terminal Development Prerequisites	Conversion to application certification.
13.	Accounting System, Audit, and Record Keeping Requirements.	Conversion to grant condition.
14.	Minimum Wage Rates	Conversion to grant condition.
15.	Veteran's Preference	Conversion to grant condition.
16.	Conformity to Plans and Specifications	Conversion to grant condition.
17.	Construction Inspection and Approval	Conversion to grant condition.
18.	Planning Projects	Conversion to grant condition.
19.	Operation and Maintenance	Retained as assurance c.3.
20.	Hazard Removal and Mitigation	Retained as assurance c.4.
21.	Compatible Land Use	Retained as assurance c.5.
22.	Economic Nondiscrimination	Retained as assurance c.6. with clarifying language.
23.	Exclusive Rights	Retained as assurance c.7 with clarifying language.
24.	Fee and Rental Structure	Retitled and retained as assurance c.8.
25.	Airport Revenues	Retitled and retained as assurance c.9.
26.	Reports and Inspections	Par. (a), (c), and (d) retained as assurance c.10; par. (b) revised.
27.	Use of Government Aircraft	Retained as assurance c.11.
28.	Land for Federal Facilities	Retained as assurance c.12.
29.	Airport Layout Plan	Retained as assurance c.13.
30.	Civil Rights	Retained as assurance c.14.
31.	Disposal of Land	Retained as assurance c.15, wording changed in accordance with P.L. 108–176.
32.	Engineering and Design Services	Conversion to grant condition.
33.	Foreign Market Restrictions	Conversion to grant condition.
34.	Policies, Standards, and Specifications	Conversion to grant condition.
35.	Relocation and Real Property Acquisition.	Conversion to grant condition.
36.	Access by Intercity Buses	Retained as assurance c. 16.
37.	Disadvantaged Business Enterprises	Retained as assurance c. 19.
New Assurance	Hangar Construction	New assurance c. 17.
New Assurance	Competitive Access	New assurance c.18.

Assurance number	Title	Disposition
New Assurance	Participation by Disadvantaged Businesses in Airport Concessions (previously incorporated by reference).	Incorporated as full text in assurance c. 19., as subparagraph (b).

In summary, of the 39 provisions of the existing airport sponsor assurances, 19 will be retained as assurances, 12 will be converted to grant conditions and 8 will be converted to application certifications. One assurance was eliminated by Public Law 108–176, and three additional assurances are proposed (two as a result of Public Law 108–176 and one due to the need to provide full text for an assurance that was previously incorporated by reference.)

Proposed Assurances

The assurances being proposed under this notice are as follows:

Airport Sponsors

A. General

1. These assurances shall be complied with in the performance of grant agreements for airport development, airport planning, and noise compatibility program grants for airport sponsors and block grant states.

2. These assurances are required to be submitted as part of the project application by sponsors requesting funds under the provisions of Title 49, United States Code (U.S.C.), subtitle VII, as amended. As used herein, the term "public agency sponsor" means a public agency with control of a public-use airport; the term "private sponsor" means a private owner of a public-use airport; and the term "sponsor" includes both public agency sponsors and private sponsors.

3. Upon acceptance of the grant offer by the sponsor, these assurances are incorporated into, and become part of, the grant agreement.

B. Duration and Applicability

1. Airport Development or Noise Compatibility Program Projects Undertaken by a Public Agency Sponsor

The terms, conditions and assurances of the grant agreement shall remain in full force and effect throughout the useful life of the facilities developed or equipment acquired for an airport development or noise compatibility program project, or throughout the useful life of the project items installed within a facility under a noise compatibility program project, but in any event not to exceed twenty (20) years from the date of acceptance of a grant offer of Federal funds for the project. However, there shall be no limit on the duration of the assurances regarding Exclusive Rights and Airport Revenue so long as the airport is used as an airport. There shall be no limit on the duration of the terms, conditions, and assurances with respect to real property acquired with federal funds. Furthermore, the duration of the Civil Rights assurance shall be specified in the assurances.

2. Airport Development or Noise Compatibility Projects Undertaken by a Private Sponsor

The preceding paragraph 1 also applies to a private sponsor except that the useful life of project items installed within a facility or the useful life of the facilities developed or equipment acquired under an airport development or noise compatibility program project shall be no less than ten (10) years from the date of acceptance of Federal aid for the project.

C. Sponsor Assurances

The sponsor hereby assures and certifies, with respect to this grant that:

1. Preserving Rights and Powers

(a) It will not take or permit any action that would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in the grant agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish, or modify any outstanding rights or claims of right of others that would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the Secretary.

(b) It will maintain good title and not sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interests in the property shown on Exhibit A to this application or, for a noise compatibility program project, that portion of the property upon which Federal funds have been expended, for the duration of the terms, conditions, and assurances in the grant agreement without approval by the Secretary. If the transferee is found by the Secretary to be eligible under Title 49, U.S.C., to assume the obligations of the grant agreement and to have the power, authority, and financial resources to carry out all such obligations, the sponsor shall insert in the contract or document transferring or disposing of the sponsor's interest, and make binding upon the transferee, all of the terms, conditions, and assurances contained in this grant agreement.

(c) For noise compatibility program projects to be carried out on privately owned property, it will enter into an agreement with the property owner that includes provisions specified by the Secretary. It will take steps to enforce this agreement against the property owner whenever there is substantial non-compliance with the terms of the agreement.

(d) If the sponsor is a private sponsor, it will take steps satisfactory to the Secretary to ensure that the airport will continue to function as a public-use airport in accordance with these assurances for the duration of these assurances.

(e) If an arrangement is made for management and operation of the airport by any agency or person other than the sponsor or an employee of the sponsor, the sponsor will reserve sufficient rights and authority to ensure that the airport will be operated and maintained in accordance with Title 49 U.S.C., the regulations and the terms, conditions and assurances in the grant agreement, and shall ensure that such arrangement also requires compliance therewith.

2. Pavement Preventive Maintenance

With respect to a project approved after January 1, 1995, for the replacement or reconstruction of pavement at the airport, it assures or certifies that it has implemented an effective airport pavement maintenance-management program and it assures that it will use such program for the useful life of any pavement constructed, reconstructed or repaired with Federal financial assistance at the airport. It will provide such reports on pavement condition and pavement management programs as the Secretary determines may be useful.

3. Operation and Maintenance

(a) The airport and all facilities which are necessary to serve the aeronautical users of the airport, other than facilities owned or controlled by the United States, shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or

prescribed by applicable Federal, state and local agencies for maintenance and operation. It will not cause or permit any activity or action thereon which would interfere with its use for airport purposes. It will suitably operate and maintain the airport and all facilities thereon or connected therewith, with due regard to climatic and flood conditions. Any proposal to close the airport temporarily for non-aeronautical purposes must first be approved by the Secretary.

In furtherance of this assurance, the sponsor will have in effect arrangements for:

1. Operating the airport's aeronautical facilities whenever required;

2. Promptly marking and lighting hazards resulting from airport conditions, including temporary conditions; and

3. Promptly notifying airmen of any condition affecting aeronautical use of the airport.

Nothing contained herein shall be construed to require that the airport be operated for aeronautical use during temporary periods when snow, flood, or other climatic conditions interfere with such operation and maintenance, repair, restoration, or replacement of any structure or facility which is substantially damaged or destroyed due to an Act of God or other condition or circumstance beyond the control of the sponsor.

(b) It will suitably operate and maintain noise compatibility program items that it owns or controls upon which Federal funds have been expended.

4. Hazard Removal and Mitigation

It will take appropriate action to assure that such terminal airspace as is required to protect instrument and visual operations to the airport (including established minimum flight altitudes) will be adequately cleared and protected by removing, lowering, relocating, marking, lighting, or otherwise mitigating existing airport hazards, and by preventing the establishment or creation of future airport hazards.

5. Compatible Land Use

It will take appropriate action, to the extent reasonable, including the adoption of zoning laws, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft. In addition, if the project is for implementation of noise compatibility program measures upon which Federal funds have been expended, it will not cause or permit any change in land use, within its jurisdiction, that will reduce its compatibility with respect to the airport.

6. Economic Nondiscrimination

(a) It will make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.

(b) In any agreement, contract, lease, or other arrangement under which the airport sponsor grants a right or privilege to conduct or to engage in activity providing aeronautical services to the public at the airport, the sponsor will insert and enforce provisions requiring the contractor to:

1. Furnish said services on a reasonable, and not unjustly discriminatory, basis to all users thereof, and

2. Charge reasonable, and not unjustly discriminatory, prices for each unit of aeronautical service, provided that the service provider may be allowed to make reasonable and uniformly applicable price reductions for volume purchasers. Discounts may be offered on a basis other than volume provided the basis is reasonable and justified.

(c) Each fixed-base operator at the airport shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-base operators making the same or similar uses of such airport and using the same or similar facilities.

(d) Each air carrier using such airport shall have the right to service its own aircraft or to use any commercial aeronautical service provider authorized or permitted by the airport sponsor to provide aeronautical services.

(e) Each air carrier using such airport (whether as a tenant, nontenant, or subtenant of another air carrier tenant) shall be subject to such nondiscriminatory and substantially comparable rules, regulations, conditions, rates, fees, rentals, and other charges with respect to facilities directly and substantially related to providing air transportation as are applicable to all such air carriers making similar use of such airport and using similar facilities, subject to reasonable classifications such as tenants or nontenants and signatory carriers or non-signatory carriers. Classification or status as tenant or signatory shall not be unreasonably withheld by any airport provided an air carrier assumes obligations substantially similar to those obligations already imposed on air carriers in such classification or status.

(f) It will not exercise or grant any right or privilege that operates to prevent any person, firm, or corporation operating its own aircraft on the airport from performing any services on its own aircraft, including, but not limited to, maintenance, repair, and refueling, provided that such service(s) are performed by the aircraft operators own employees.

(g) If the airport sponsor elects to provide aeronautical services to the public, it shall do so only on the same terms as are uniformly applicable to other commercial aeronautical service providers authorized by the airport sponsor to provide such services at the airport. This assurance is not intended to prevent the airport sponsor from invoking its propriety exclusive right to be the sole provider of a given aeronautical service.

(h) The sponsor may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport.

(i) The sponsor may prohibit or limit any given type, kind or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.

7. Exclusive Rights

It will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public. For purposes of this paragraph, providing services at an airport by a single fixed-base operator shall not be construed as an exclusive right if both of the following apply:

(a) It would be unreasonably costly, burdensome, or impractical for more than one fixed-base operator to provide such service(s), and

(b) Allowing more than one fixed-base operator to provide such service(s) would require the reduction of space currently leased pursuant to an existing agreement between such single fixed-based operator and such airport.

It further agrees that it will not, either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airport to conduct any aeronautical activities including, but not limited to, charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products whether or not conducted in

conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities that, because of their direct relationship to the operation of aircraft, can be regarded as an aeronautical activity, and that it will terminate any exclusive right to conduct an aeronautical activity now existing at such an airport before the grant of any assistance under Title 49, U.S.C.

8. Airport Revenue Generation

It will maintain a fee and rental structure for airport revenue generation for the facilities and services at the airport which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport, taking into account such factors as the volume of traffic and economy of collection. Except for facilities intended to be constructed for revenue production or the real property upon which such facilities are constructed, no part of the Federal share for an airport development project or an airport planning or noise compatibility project for which a grant is made under Title 49, U.S.C., the Airport and Airway Improvement Act of 1982, the Federal Airport Act or the Airport and Airway Development Act of 1970 shall be included in the rate base in establishing fees, rates, and charges for users of that airport.

9. Airport Revenue Use

(a) All revenues generated by the airport and any local taxes on aviation fuel established after December 30, 1987, will be expended by it for the capital or operating costs of the airport; the local airport system; or other local facilities that are owned or operated by the owner or operator of the airport and which are directly and substantially related to the actual air transportation of passengers or property; or for noise mitigation purposes on or off the airport. However, if covenants or assurances in debt obligations issued before September 3, 1982, by the owner or operator of the airport, or provisions enacted before September 3, 1982, in governing statutes controlling the owner or operator's financing provide for the use of the revenues from any of the airport owner or operator's facilities, including the airport, to support not only the airport but also the airport owner or operator's general debt obligations or other facilities, then this limitation on the use of all revenues generated by the airport (and, in the case of a public airport, local taxes on aviation fuel) shall not apply.

(b) As part of the annual audit required under the Single Audit Act of 1984, the sponsor will direct that the audit will review, and the resulting audit report will provide an opinion concerning, the use of airport revenue and taxes in paragraph (a), and indicating whether funds paid or transferred to the owner or operator are paid or transferred in a manner consistent with Title 49 U.S.C. and any other applicable provision of law, including any regulation promulgated by the Secretary or Administrator.

(c) Civil penalties or other sanctions will be imposed for violation of this assurance in accordance with the provisions of Section 471207 of Title 49, U.S.C.

10. Reports and Inspections

It will:

(a) Submit to the Secretary such annual or special financial and operations reports as the Secretary may reasonably request and make such reports available to the public; make available to the public at reasonable times and places a report of the airport budget in a format prescribed by the Secretary;

(b) On request by an authorized agent of the Secretary, make available for inspection records, documents, deeds, agreements, regulations, cost allocation plans, budgets and other instruments of the airport and sponsor affecting airport development projects and uses of airport revenues.

(c) For noise compatibility program projects, make records and documents relating to the project and continued compliance with the terms, conditions, and assurances of the grant agreement including deeds, leases, agreements, regulations, and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request.

(d) In a format and time prescribed by the Secretary, provide to the Secretary and make available to the public following each of its fiscal years, an annual report listing in detail:

1. All amounts paid by the airport to any other unit of government and the purposes for which each such payment was made; and

2. All services and property by the airport to other units of government and the amount of compensation received for provision of each such service and property.

11. Use by Government Aircraft

It will make available all of the facilities of the airport developed with Federal financial assistance and all those usable for landing and takeoff of aircraft to the United States for use by Government aircraft in common with other aircraft at all times without charge, except, if the use by Government aircraft is substantial, charge may be made for a reasonable share, proportional to such use, for the cost of operating and maintaining the facilities used. Unless otherwise determined by the Secretary, or otherwise agreed to by the sponsor and the using agency, substantial use of an airport by Government aircraft will be considered to exist when operations of such aircraft are in excess of those which, in the opinion of the Secretary, would unduly interfere with use of the landing areas by other authorized aircraft, or during any calendar month that:

(a) Five (5) or more Government aircraft are regulatory based at the airport or on land adjacent thereto; or

(b) The total number of movements (counting each landing as a movement) of Government aircraft is 300 or more, or the gross accumulative weight of Government aircraft using the airport (the total movement of Governmental aircraft multiplied by gross weights of such aircraft) is in excess of five million pounds.

12. Land for Federal Facilities

It will furnish without cost to the Federal Government for use in conjunction with any air traffic control or air navigation activities, or weather-reporting and communication activities related to air traffic control, any areas of land or water, or estate therein, or rights in buildings of the sponsor as the Secretary considers necessary or desirable for construction, operation, and maintenance at Federal expense of space or facilities for such purposes. Such areas, or any portion thereof, will be made available as provided herein within four months after receipt of a written request from the Secretary.

13. Airport Layout Plan

(a) It will keep up to date at all times an airport layout plan of the airport showing (1) Boundaries of the airport and all proposed additions thereto, together with the boundaries of all office areas owned or controlled by the sponsor for airport purposes and proposed additions thereto; (2) the location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars and roads), including all proposed extensions and reductions of existing airport facilities; and (3) the location of all existing and proposed non-aviation areas and of all existing improvements thereon. Such airport layout plans and each amendment, revision ,or modification thereof, shall be subject to

the approval of the Secretary which approval shall be evidenced by the signature of a duly authorized representative of the Secretary on the face of the airport layout plan. The sponsor will not make or permit any changes or alterations in the airport or any of its facilities that are not in conformity with the airport layout plan, as approved by the Secretary, and that might, in the opinion of the Secretary, adversely affect the safety, utility, or efficiency of the airport.

(b) If a change or alteration in the airport or the facilities is made that the Secretary determines adversely affects the safety, utility, or efficiency of any federally owned, leased, or funded property on or off the airport and that is not in conformity with the airport layout plan as approved by the Secretary, the owner or operator will, if requested, by the Secretary (1) Eliminate such adverse effect in a manner approved by the Secretary; or (2) bear all costs of relocating such property (or replacement thereof) to a site acceptable to the Secretary and all costs of restoring such property (or replacement thereof) to the level of safety, utility, efficiency, and cost of operation existing before the unapproved change in the airport or its facilities.

14. Civil Rights

It will comply with such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from funds received from this grant. This assurance obligates the sponsor for the period during which Federal financial assistance is extended to the program, except where Federal financial assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon in which case the assurance obligates the sponsor or any transferee for the longer of the following periods: (a) The period during which the property is used for a purpose for which Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits, or (b) the period during which the sponsor retains ownership or possession of the property.

15. Disposal of Land

(a) For land purchased under a grant for airport noise compatibility purposes, it will dispose of the land when the land is no longer needed for such purposes at fair market value at the earliest practicable time. That portion of the proceeds of such disposition which is proportionate to the United States' share of acquisition of such land will, at the discretion of the Secretary, (1) Be paid to the Secretary for deposit in the Trust Fund, or (2) be reinvested in an approved noise compatibility project, as prescribed by the Secretary, including the purchase of nonresidential buildings or property in the vicinity of residential buildings or property previously purchased by the airport as part of a noise compatibility program.

(b) For land purchased under a grant for airport development purposes (other than noise compatibility), it will, when the land is no longer needed for airport purposes, dispose of such land at fair market value or make available to the Secretary an amount equal to the United States' proportionate share of the fair market value of the land. That portion of the proceeds of such disposition which is proportionate to the United States' share of the cost of acquisition of such land will, (a) Upon application to the Secretary, be reinvested in another eligible airport improvement project or projects approved by the Secretary at that airport or within the national airport system, or (b) be paid to the Secretary for deposit in the Trust Fund if no eligible project exists.

(c) Land shall be considered to be needed for airport purposes under this assurance if (a) It may be needed for aeronautical purposes (including runway protection zones) or serve as noise buffer land, and (b) the revenue from interim uses of such land contributes to the financial self-sufficiency of the airport. Further, land purchased with a grant received by an airport operator or owner before December 31, 1987, will be considered to be needed for airport purposes if the Secretary or Federal agency making such grant before December 31, 1987, was notified by the operator or owner of the uses of such land, did not object to such use, and the land continues to be used for that purpose, such use having commenced no later than December 15, 1989.

(d) Disposition of such land under (a), (b), or (c) will be subject to the retention or reservation of any interest or right therein necessary to ensure that such land will only be used for purposes which are compatible with noise levels and safety associated with operation of the airport.

16. Access by Intercity Buses

The airport owner or operator will permit, to the maximum extent practicable, intercity buses or other modes of transportation to have access to the airport; however, it has no obligation to fund special facilities for intercity buses or for other modes of transportation.

17. Hangar Construction

If the airport owner or operator and a person who owns an aircraft agree that hangar is to be constructed at the airport for the aircraft at the aircraft owner's expense, the airport owner or operator will grant to the aircraft owner a long-term lease for the hangar that is subject to such terms and conditions on the hangar as the airport owner or operator may impose.

18. Competitive Access

(a) If the airport owner or operator of a medium or large hub airport (as defined in section 47102 of title 49, U.S.C.) has been unable to accommodate one or more requests by an air carrier for access to gates or other facilities at that airport in order to allow the air carrier to provide service to the airport or to expand service at the airport, the airport owner or operator shall transmit a report to the Secretary that—

1. Describes the requests;

2. Provides an explanation as to why the requests could not be accommodated; and

3. Provides a time frame within which, if any, the airport will be able to accommodate the requests.

(b) Such report shall be due on either February 1 or August 1 of each year if the airport has been unable to accommodate the request(s) in the six-month period prior to the applicable due date.

19. Disadvantages Business Enterprise

(a) The recipient shall not discriminate on the basis of race, color, national origin or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non discrimination in the award and administration of DOT-assisted contracts. The recipient's DBE program, as required by 49 CFR Part 26, and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the

Program Fraud Civil Remedies Act of 1936 (31 U.S.C. 3801).

(b) The airport owner or operator will take necessary action to ensure, to the maximum extent practicable, that at least 10 percent of all businesses at the airport selling consumer products or providing consumer services to the public are small business concerns (as defined by regulations of the Secretary) owned and controlled by a socially and economically disadvantaged individual (as defined in section 47113(a) of title 49, U.S.C.) or qualified HUBZone small business concerns (as defend in section 3(p) of the Small Business Act). In taking this action, the airport owner or operator will be subject to the requirements of 49 CFR Part 23 or subsequent regulations issued by the Secretary to implement section 47107(e) of Title 49, U.S.C.

These proposed assurances will be issued pursuant to the authority of title 49, U.S.C.

Upon acceptance of the Airport Improvement Program (AIP) grant by an airport sponsor, the assurances become a contractual obligation between the airport sponsor and the Federal government.

Dated: Issued in Washington, DC, on August 13, 2004.

Dennis E. Roberts,

Director, Office of Airport Planning and Programming.

[FR Doc. 04–19378 Filed 8–23–04; 8:45 am]

BILLING CODE 1505–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Policy Statement: Proposed Change to the Airworthiness Criteria for Airworthiness Certification of Normal Category Airships; FAA Document FAA–P–8110–2; PS–ACE100–2004–10033

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability; request for comments.

SUMMARY: This notice announces the availability of and requests comments on FAA document number FAA–P–8110–2, Airship Design Criteria, (ADC) at Change 2. The ADC is suitable for the type certification of airships in the normal category, with a seating capacity of nine seats or less, excluding pilots. This notice advises the public, and especially manufacturers and potential manufacturers of normal category airships, that the FAA intends to develop Change 3 for this document.

DATES: Comments must be received on or before December 22, 2004.

ADDRESSES: Copies of the current Airship Design Criteria, FAA Document FAA–P–8110–2, PS–ACE100–2004–10033, may be requested from the following: Small Airplane Directorate, Standards Office (ACE–110), Aircraft Certification Service, Federal Aviation Administration, 901 Locust Street, Room 301, Kansas City, MO 64106. These airworthiness criteria are also available on the Internet. These criteria will be posted in the Regulations and Guidance Library at the following address *http://www.airweb.faa.gov/policy*. Send all comments concerning the proposed Change 3 of the airworthiness criteria for normal category airships to the individual identified under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Mike Reyer or Karl Schletzbaum, Federal Aviation Administration, Small Airplane Directorate, Regulations & Policy, ACE–111, 901 Locust Street, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4131 (M. Reyer); or (816) 329–4146 (K. Schletzbaum); fax: (816) 329–4090; e-mail: *karl.schletzbaum@faa.gov*.

Discussion

Background

Comments received may be utilized to develop Change 3 for the ADC. This notice includes the Airship Design Criteria at Change 2 as issued on February 5, 1995. Since the issuance of Change 2 of the ADC, the FAA has received various inputs relating to revising or improving these criteria, but these inputs have not been incorporated into the document yet. Some of these recommendations may have been unsolicited and not received in the context of a formal process. Additionally, with time and the rapid change of technology since the last update of these criteria, some of the recommendations may not be as applicable as when they were initially proposed. We also believe that the structure of the industry affected has changed substantially since the receipt of many of the comments. Considering these factors, we decided to not include any of the proposed changes to the ADC in this notice but to solicit new, additional, or revised comments from the current active airship industry. This notice includes the ADC at Change 2 as issued on February 5, 1995, as a reference document for commenters.

This notice is necessary to advise the public of the development of this proposed change to the airship airworthiness criteria and to give all interested persons an opportunity to present their views on it.

Airships are certificated under the provisions of 14 CFR, part 21, § 21.17(b), which allows the Administrator to designate appropriate airworthiness criteria for special classes of aircraft, including airships. Designated criteria should provide a level of safety equivalent to the airworthiness regulations contained in 14 CFR, parts 23, 25, 27, 29, 31, 33, and 35. The FAA has decided that airworthiness criteria, not the issuance of actual regulations, are the most efficient and flexible method of obtaining an acceptable level of safety for normal category airships. The FAA bases this decision on the formative state of this industry and the potential for airships to develop into a larger segment of the aerospace industry. The FAA may decide to codify airship airworthiness requirements at a later time, if warranted.

These are acceptable airworthiness criteria, but not the only acceptable criteria, for certificating a normal category airship in the United States. These criteria are internationally recognized, but are not suitable for all types of airships, specifically those that have more than nine seats. Up to 19 seats, the FAA may consider some other criteria based on foreign airship airworthiness standards. For certain types of proposed large airships, the FAA has recognized the need for a transport category of airships and has noticed the German-Dutch Transport Airship Requirement (TAR) as proposed airworthiness criteria.

These proposed airworthiness criteria only apply to non-rigid airships that are capable of vertical ascent (near equilibrium) operations. These proposed airworthiness criteria do not include provisions for hybrid aircraft/airships that require or operate with significant dynamic lift. The FAA expects that modifications and additions to proposed criteria will be necessary for specific airship projects, due to the unique nature of each airship design. Comments on technology issues beyond the current criteria will be reviewed, but not necessarily incorporated.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite your comments on this proposed change to airworthiness criteria for normal category airships. Send any data or views as you may desire. Identify the airworthiness criteria Policy Statement Number PS–ACE100–2004–10033 on your

comments, and if you submit your comments in writing, send two copies of your comments to the above address. The Small Airplane Directorate will consider all communications received on or before the closing date for comments. We may change the proposal contained in this notice because of the comments received.

Comments sent by fax or the Internet must contain "Comments to proposed policy statement PS–ACE100–2004–10033" in the subject line. You do not need to send two copies if you fax your comments or send them through the Internet. If you send comments over the Internet as an attached electronic file, format it in Microsoft Word. State what specific change you are seeking to the proposed policy statement and include justification (for example, reasons or data) for each request.

Issued in Kansas City, Missouri, on August 12, 2004.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–19366 Filed 8–23–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2004–18451; Notice 2]

Michelin North America, Inc., Grant of Petition for Decision of Inconsequential Noncompliance

Michelin North America, Inc. (Michelin) has determined that certain tires it manufactured in 2004 do not comply with S6.5(f) of Federal Motor Vehicle Safety Standard (FMVSS) No. 119, "New pneumatic tires for vehicles other than passenger cars." Pursuant to 49 U.S.C. 30118(d) and 30120(h), Michelin has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports." Notice of receipt of the petition was published, with a 30-day comment period, on July 6, 2004, in the **Federal Register** (69 FR 40716). NHTSA received no comments.

Michelin produced approximately 278 Uniroyal Laredo HD/H Load Range D size LT215/85R16 tires during the period from March 30, 2004 to April 30, 2004 that do not comply with FMVSS No. 119, S6.5(f). These tires were marked "tread plies: 2 polyester + 2 steel + 1 nylon; sidewall plies: 2 polyester." They should have been marked "tread plies: 2 polyester + 2 steel; sidewall plies: 2 polyester."

S6.5(f) of FMVSS No. 119 requires that each tire shall be marked on each sidewall with "the actual number of plies and the composition of the ply cord material in the sidewall and, if different, in the tread area."

Michelin believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. Michelin asserts that the tires meet or exceed all performance requirements of FMVSS No. 119, and that the noncompliance has no effect on the performance of the tires or motor vehicle safety. Michelin also states that, because the tire sidewalls are not of steel cord construction, but are actually polyester, there is no potential safety concern for people working in the tire retread, repair, and recycling industries.

The Transportation Recall, Enhancement, Accountability, and Documentation (TREAD) Act (Pub. L. 106–414) required, among other things, that the agency initiate rulemaking to improve tire label information. In response, the agency published an Advance Notice of Proposed Rulemaking (ANPRM) in the **Federal Register** on December 1, 2000 (65 FR 75222).

The agency received more than 20 comments on the tire labeling information required by 49 CFR 571.109 and 119, Part 567, Part 574, and Part 575. In addition, the agency conducted a series of focus groups, as required by the TREAD Act, to examine consumer perceptions and understanding of tire labeling. Few of the focus group participants had knowledge of tire labeling beyond the tire brand name, tire size, and tire pressure.

Based on the information obtained from comments to the ANPRM and the consumer focus groups, we have concluded that it is likely that few consumers have been influenced by the tire construction information (number of plies and cord material in the sidewall and tread plies) provided on the tire label when deciding to buy a motor vehicle or tire.

Therefore, the agency agrees with Michelin's statement that the incorrect markings in this case do not present a serious safety concern.[1] There is no effect of the noncompliance on the operational safety of vehicles on which these tires are mounted. In the agency's judgment, the incorrect labeling of the tire construction information will have an inconsequential effect on motor vehicle safety because most consumers do not base tire purchases or vehicle operation parameters on the number of plies in the tire. In addition, the tires are certified to meet all the performance requirements of FMVSS No. 119 and all other informational markings as required by FMVSS No. 119 are present. Michelin has corrected the problem.

In consideration of the foregoing, NHTSA has decided that the petitioner has met its burden of persuasion that the noncompliance described is inconsequential to motor vehicle safety. Accordingly, Michelin's petition is granted and the petitioner is exempted from the obligation of providing notification of, and a remedy for, the noncompliance.

Authority: (49 U.S.C. 30118, 30120; delegations of authority at CFR 1.50 and 501.8)

Issued on: August 19, 2004.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 04–19379 Filed 8–23–04; 8:45 am]

BILLING CODE 4910–59–P

[1] This decision is limited to its specific facts. As some commenters on the ANPRM noted, the existence of steel in a tire's sidewall can be relevant to the manner in which it should be repaired or retreaded.

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

August 17, 2004.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before September 23, 2004 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1618.
Form Number: IRS form 8863.
Type of Review: Revision.
Title: Education Credits (Hope and Lifetime Learning Credits).
Description: Section 25A of the Internal Revenue Code allows for two education credits, the Hope credit and the lifetime learning credit. Form 8863 will be used to compute the amount of

allowable credits. The IRS will use the information on the form to verify that respondents correctly computed their education credits.

Respondents: Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 6,632,933.

Estimated Burden Hours Respondent/ Recordkeeper:

	Minutes
Recordkeeping	12
Learning about the law or the form	8
Preparing the form	32
Copying, assembling, and sending the form to the IRS	33

Frequency of response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 9,489,708 hours.

OMB Number: 1545–1886.

Revenue Procedure Number: Revenue Procedure 2004–35.

Type of Review: Extension.

Title: Late Spousal S Corp Consents in Community Property States.

Description: Revenue Procedure 2004–35 allows for the filing of certain late shareholder consents to be an S Corporation with the IRS Service Center.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 500.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of response: On occasion.

Estimated Total Reporting Burden: 500 hours.

Clearance Officer: Paul H. Finger, (202) 622–4078, Internal Revenue Service, Room 6516, 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. 04–19325 Filed 8–23–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Proposed Extension of Information Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, 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 a continuing information collection, as required by the Paperwork Reduction Act of 1995. The OCC is soliciting comment concerning its information collection titled, "(MA)–Management Official Interlocks—12 CFR part 26."

DATES: You should submit written comments by October 25, 2004.

ADDRESSES: You should direct written comments to the Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, Attention: 1557–0196, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by facsimile transmission to (202) 874–4448, or by electronic mail to *regs.comments@occ.treas.gov*. You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874–5043.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from John Ference, OCC Clearance Officer, or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval of the following information collection:

Title: (MA)–Management Official Interlocks—12 CFR part 26.

OMB Number: 1557–0196.

Description: The OCC is requesting comment on its proposed extension, without change, of the information collection titled, "(MA)–Management Official Interlocks—12 CFR part 26."

Under the Interlocks Act, two competing depository institutions generally may not share management officials. However, the OCC has legal authority to implement exemptions to this general prohibition. This information collection is needed to prevent any management official interlock that would result in a monopoly or substantial lessening of competition, and to foster competition between unaffiliated institutions. The OCC uses the information to ensure that a proposed management interlock is permitted under statute, is eligible for an exemption, and does not have an anticompetitive effect. The OCC also uses the information to determine whether a national bank should be permitted to share a management official with a competing depository institution.

Type of Review: Extension of OMB approval.

Affected Public: Businesses or other for-profit (national banks).

Estimated Number of Respondents: 7.

Estimated Total Annual Responses: 7.

Frequency of Response: On occasion.

Estimated Time Per Respondent: 4 hours.

Estimated Total Annual Burden: 29 hours.

An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless the information collection displays a currently valid OMB control number.

Comments submitted in response to this notice will be summarized and 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 has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Stuart Feldstein,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. 04–19283 Filed 8–23–04; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 13560 and 13561

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 13560, HCTC Health Plan Administrator (HPA) Return of Funds Form, and Form HCTC Health Plan Administrators Operations Guide.

DATES: Written comments should be received on or before October 25, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Paul H. Finger, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the internet at *CAROL.A.SAVAGE@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Form 13560, HCTC Health Plan Administrator (HPA) Return of Funds Form, and Form 13561, HCTC Health Plan Administrators Operations Guide.

OMB Number: 1545–1891.

Forms Number: Forms 13560 and 13561.

Abstract: Form 13560 is completed by Health Plan Administrator (HPAs) and accompanies a return of funds in order to ensure proper handling. This form serves as supporting documentation for any funds returned by an HPA and clarifies where the payment should be applied and why it is being sent. Form 13561 will be provided in the HCTC (Health Coverage Tax Credit) Health Plan Administrator Operations Guide. Form 13561 is an evaluation form intended to gather feedback from HPAs on the quality of the HCTC HPA Registration and Operations Guides.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 200.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 50.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency; including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 18, 2004.

Paul H. Finger,

IRS Reports Clearance Officer.

[FR Doc. 04–19353 Filed 8–23–04; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 3 Taxpayer Advocacy Panel (Including the States of Florida, Georgia, Alabama, Mississippi, Louisiana, Arkansas and Tennessee)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 3 Taxpayer Advocacy Panel will be conducted in Nashville, TN. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Friday, September 17, 2004 and Saturday, September 18, 2004.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227 (toll-free), or 954–423–7979 (non toll-free).

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10 (a) (2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 3 Taxpayer Advocacy Panel will be held Friday, September 17, 2004, from 8:30 a.m. to 12 p.m. and from 1 p.m. to 5 p.m. EDT and Saturday, September 18, 2004, from 8:30 a.m. to 12 p.m. EDT in Nashville, TN at Courtyard Marriott Downtown, 170 Fourth Ave North, Nashville, TN 37219. For information or to confirm attendance, notification of intent to attend the meeting must be made with Sallie Chavez. Mrs. Chavez may be reached at 1–888–912–1227 or 954–423–7979 or write Sallie Chavez, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324, or post comments to the Web site: *http://www.improveirs.org*.

The agenda will include: Various IRS issues.

Dated: August 19, 2004.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. 04–19354 Filed 8–23–04; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 1 Taxpayer Advocacy Panel (Including the States of New York, Connecticut, Massachusetts, Rhode Island, New Hampshire, Vermont and Maine)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 1 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, September 21, 2004.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227 (toll-free), or 718–488–3557 (non toll-free).

SUPPLEMENTARY INFORMATION: An open meeting of the Area 1 Taxpayer Advocacy Panel will be held Tuesday, September 21, 2004 from 11 a.m. EDT to 12 p.m. EDT via a telephone conference call. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 718–488–3557, or write Marisa Knispel, TAP Office, 10

MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Marisa Knispel. Ms. Knispel can be reached at 1–888–912–1227 or 718–488–3557, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: August 19, 2004.

Bernard E. Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. 04–19355 Filed 8–23–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 6 Taxpayer Advocacy Panel (Including the States of Alaska, Arizona, Colorado, Hawaii,Idaho, Montana, New Mexico, Nevada, Oregon, Washington and Wyoming)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 6 committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel (TAP) is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. The TAP will use citizen input to make recommendations to the Internal Revenue Service.

DATES: The meeting will be held Monday, September 20, 2004.

FOR FURTHER INFORMATION CONTACT: Mary Peterson O'Brien at 1–888–912–1227, or 206–220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 6 Taxpayer Advocacy Panel will be held Monday, September 20, 2004 from 2 p.m. Pacific Time to 3 p.m. Pacific Time via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write to Mary Peterson O'Brien, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or you can contact us at *http://www.improveirs.org.* Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Mary Peterson O'Brien. Ms. O'Brien can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: Various IRS issues.

Dated: August 19, 2004.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. 04–19356 Filed 8–23–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Wage and Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advoçacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, September 22, 2004 from 12 p.m. to 1 p.m. EDT.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227, or 954–423–7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel will be held Wednesday, September 22, 2004, from 12 p.m. to 1 p.m. EDT via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7979, or write Sallie Chavez, TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Sallie Chavez. Ms. Chavez can be reached at 1–888–912–1227 or 954–423–7979, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include: Various IRS issues.

Dated: August 19, 2004.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. 04–19357 Filed 8–23–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Structural Safety of Department of Veterans Affairs Facilities; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Advisory Committee on Structural Safety of Department of Veterans Affairs Facilities will be held on Thursday, September 2, 2004, from 10 a.m. until 4:30 p.m., and on Friday, September 3, 2004, from 8:30 a.m. until 12:30 p.m., in Room 442, Export Import Bank, 811 Vermont Avenue, NW., Washington, DC. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on matters of structural safety in the construction and remodeling of VA facilities and to recommend standards for use by VA in the construction and alteration of facilities as prescribed under Section 8105 of Title 38, United States Code.

On September 2, the Committee will review developments in the fields of fire safety issues and structural design as they relate to seismic and other natural hazards safety of buildings. On September 3, the Committee will receive briefings/presentations on appropriate current fire and seismic safety issues that are particularly relevant to facilities owned and leased by the Department. The Committee will also vote on appropriate structural and fire safety recommendations for inclusion in VA's standards.

No time will be allocated for receiving oral presentations from the public. However, the Committee will accept written comments. Comments should be sent to Mr. Krishna K. Banga, Senior Structural Engineer, Facilities Quality Service, Office of Facilities Management (181A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Those wishing to attend should contact Mr. Banga at (202) 565–9370.

Dated: August 9, 2004.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 04–19328 Filed 8–23–04; 8:45 am]

BILLING CODE 8320–01–M

Federal Register

Tuesday,
August 24, 2004

Part II

Department of Transportation

National Highway Traffic Safety Administration

49 CFR Parts 591, 592, and 594
Certification; Importation of Vehicles and Equipment Subject to Federal Safety, Bumper and Theft Prevention Standards; Registered Importers of Vehicles Not Originally Manufactured To Conform With the Federal Motor Vehicle Safety Standards; Schedule of Fees Authorized by 49 U.S.C. 30141; Final Rule

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 591, 592 and 594

[Docket No. NHTSA 2000–8159; Notice 2]

RIN 2127–AH67

Certification; Importation of Vehicles and Equipment Subject to Federal Safety, Bumper and Theft Prevention Standards; Registered Importers of Vehicles Not Originally Manufactured To Conform With the Federal Motor Vehicle Safety Standards; Schedule of Fees Authorized by 49 U.S.C. 30141

AGENCY: National Highway Traffic Safety Administration (NHTSA), U.S. Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This document amends regulations that pertain to the importation by registered importers (RIs) of motor vehicles that were not manufactured to comply with all applicable Federal motor vehicle safety, bumper, and theft prevention standards. The principal effect of these changes is to clarify the requirements applicable to RIs and applicants for RI status, as well as the procedures for suspending or revoking the registrations of RIs that violate the statute or regulations governing these activities. Although we had proposed a number of changes to the procedures applicable to importation of vehicles originally manufactured for sale in Canada, based upon the comments from the public, we are not acting on those proposals at this time. We intend to issue a separate notice to propose a different approach for processing importations of those vehicles.

DATES: *Effective Date:* The effective date of this final rule is September 30, 2004. *Petitions for Reconsideration:* Petitions for reconsideration must be received on or before October 15, 2004.

ADDRESSES: Petitions for reconsideration of the amendments made by this final rule must refer to the docket or Regulatory Identification Number (RIN) for this rulemaking, and be addressed to the Administrator, National Highway Traffic Safety Administration 400 Seventh Street, SW., Washington, DC 20590.

You may submit a petition by any of the following methods:

- Web Site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site. Please note, if you are submitting petitions electronically as a PDF (Adobe) file, we ask that the documents submitted be scanned using Optical Character Recognition (OCR) process, thus allowing the agency to search and copy certain portions of your submissions.[1] Please also note that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For technical issues, contact Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA, (202–366–3151); for legal issues contact Michael Goode, Office of Chief Counsel, NHTSA (202–366–5263). NHTSA's address is 400 Seventh St., S.W., Washington, D.C. 20590.

SUPPLEMENTARY INFORMATION:

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[1] Optical character recognition (OCR) is the process of converting an image of text, such as a scanned paper document or electronic fax file, into computer-editable text.

I. Background of This Rulemaking Action

This final rule is based upon a Notice of Proposed Rulemaking (NPRM) published on November 20, 2000 (65 FR 69810–38).

Comments on the NPRM were received from a variety of sources. Registered Importers that commented were Autosource dba Trucks Plus, Chariots of Desire, Bisbee Importing, and Auto Enterprises, Inc. Vehicle manufacturers that commented were American Honda Motor Co., Volkswagen (Volkswagen of America, Volkswagen, AG, Audi, AG), and Harley-Davidson Motor Company. Trade organizations commenting were the North American Automobile Trade Association (NAATA), the Coalition of Vehicle Manufacturers, the National Automobile Dealers Association (NADA), the American Association of Motor Vehicle Administrators (AAMVA), and the National Auto Auction Association (NAAA). We had comments from two insurance companies (Avalon Risk Management, Inc. and XL Specialty Insurance Co.), one customhouse broker (BCB International), and the National Insurance Crime Bureau (NICB). We also received comments from Raymond J. Pelletti, Bryan Milazzo, Richard McLaren (Professor of Law, University of Western Ontario, Canada), and the law firm of Hyman & Kaplan P.A.

A. The Imported Vehicle Safety Compliance Act of 1988 (Pub. L. 100–562)

Since January 31, 1990, the effective date of the Imported Vehicle Safety Act of 1988 ("the 1988 Act"), it has been unlawful to import into the United States vehicles not originally manufactured to conform to all applicable Federal motor vehicle safety standards (FMVSS)(sometimes referred to as "gray market vehicles") unless NHTSA has determined that they are capable of being modified to comply with the FMVSS in effect on the date of their manufacture.[2] Conformity modifications may only be performed by, and nonconforming vehicles intended for resale may only be imported by, a "registered importer" ("RI"). Under the 1988 Act, a RI is an entity that NHTSA has recognized as being technically and financially capable of satisfying a number of requirements, including the ability to conform noncomplying vehicles to the FMVSS and to remedy noncompliances and safety-related defects that may exist or arise in the vehicles that they have imported. See generally 49 U.S.C. 30141–30147 and 49 CFR Parts 591–594.

In the middle 1980s, the great majority of imported nonconforming vehicles were manufactured in Europe, due to the favorable rate of exchange of the dollar against European currencies. But as the rate of exchange grew less favorable for the dollar, the volume of gray market vehicle imports from Europe declined also; by 2000, these imports totaled only 1,292 units. In the same period, the Canadian dollar had declined substantially against the American dollar, making it an attractive commercial proposition to import Canadian vehicles. In 2002, the volume of Canadian imports reached 210,292 vehicles, representing 99.2 percent of the total of 212,044 gray market vehicles imported by RIs.

B. Vehicle Eligibility Determinations (49 CFR Part 593)

Before a nonconforming motor vehicle can be imported into the United States, NHTSA must have decided, after public notice and consideration of comments that vehicles of that make, model, and model year are capable of being modified to comply with the FMVSS. Each year, we also publish an updated list of eligible vehicles, as Appendix A to 49 CFR Part 593, *Determinations That a Vehicle Not Originally Manufactured to Conform to the Federal Motor Vehicle Safety Standards is Eligible for Importation.*

Most vehicles sold in Canada have counterparts of the same make, model, and model year in the United States that are physically identical to them. The Canadian motor vehicle safety laws are patterned on those of the United States, requiring that motor vehicles be manufactured to comply with the Canadian Motor Vehicle Safety Standards (CMVSS) and be certified as complying by their manufacturer. Further, the CMVSS are identical to the FMVSS in all but a few respects. To facilitate importation, we decided on our own initiative that most Canadian vehicles certified as complying with the CMVSS were eligible for importation (see 55 FR 32988, August 13, 1990 and that portion of Part 593, Appendix A, entitled "Vehicles Certified by Their Original Manufacturer as Complying With All Applicable Canadian Motor Vehicle Safety Standards" (49 CFR part 593 (2002)). Our decision has facilitated international trade by removing one barrier to the free flow of most Canadian vehicles across the Canadian-American border.

C. Importation of Canadian Vehicles for Personal Use

To address the growing number of importations from Canada, some time ago we simplified the procedures under which some Canadian vehicles could be imported for personal use. Given the congruity of the FMVSS and the CMVSS, we decided that the certification requirement of the Safety Act (49 U.S.C. 30115) could be satisfied by a letter from the original manufacturer of the Canadian vehicle to the importer stating that the vehicle met all applicable FMVSS except for minor labeling requirements. By this we mean requirements such as those established by FMVSS No. 101 (a "km" label for an odometer calibrated in kilometers, and the tire information placard required by S4.3 of FMVSS No. 110 for passenger cars, or its counterpart for other vehicles in FMVSS No. 120) (these are referred to as virtual compliance certification letters). On this basis, we have exempted from the RI process Canadian vehicles imported for personal use by individuals who have a virtual compliance certification letter from the vehicle manufacturer. This has expedited traffic at the U.S.-Canadian

[2] The 1988 Act contains several exceptions under which noncomplying vehicles can be imported without going through a registered importer; e.g., vehicles temporarily imported for special purposes, vehicles that are least 25 years old. See 49 U.S.C. 30112(b).

border and relieved a burden on individuals whose Canadian-certified cars comply with all FMVSS except for minor labeling requirements. However, those Canadian vehicles that have not been manufactured to meet the FMVSS that are more stringent than the CMVSS, such as FMVSS No. 208, *Occupant Crash Protection,* and the dynamic crash requirements of FMVSS No. 214, *Side Impact Protection,* obviously cannot be covered by a manufacturer's virtual compliance certification letter. A person wishing to import such a vehicle for personal use must contract with a RI to conform the vehicle as part of the importation process, as required under the 1988 Act. In addition, NHTSA would have to determine such a vehicle to be eligible for importation before it could be lawfully imported.

We proposed to formalize these policies in 49 CFR 591.5(g), which would have covered importations of virtually compliant vehicles by RIs in addition to importations by individuals for personal use. In view of our decision, discussed below, not to extend the virtual compliance concept to vehicles imported by RIs, we are adopting Section 591.5(g) as proposed, but specifying that it applies only to vehicles imported for personal use.

II. Our Efforts To Reduce the Burden on Canadian Vehicles Imported for Resale

In 2000, we preliminarily concluded that some of the current procedures and requirements have resulted in regulatory burdens on the importation of Canadian vehicles for resale that are not necessary to implement the safety purposes of the statute, and we proposed a number of simplifying amendments.

A. The Present Importation Process

Nonconforming vehicles imported for resale can only be imported by a RI. The RI must enter the vehicle under a bond that guarantees that it will bring the vehicle into compliance and certify the vehicle's compliance to us within 120 days after entry. 49 U.S.C. 30141(d); 49 CFR 591.8. The RI must support its certification with appropriate documentation.

Until the bond is released, the RI may not register the vehicle or license it for use on the public roads (or release it from the RI's custody for such purposes). 49 U.S.C. 30146(a). However, if the RI has not heard from us within 30 days after submitting its certification package, it may release the vehicle. But if we advise the RI within the 30-day period that we intend to inspect the vehicle, the RI must retain custody until the inspection is completed. 49 U.S.C. 30146(c).

Failure of the RI to comply with these and other requirements can result in an order that it export the vehicle, forfeiture of the bond, civil penalty liability, and/or suspension or revocation of the RI's registration.

B. The Final Rule Does Not Adopt the Proposal To Establish Different Procedures for Importation From Canada. NHTSA Will Issue a Notice Reflecting a Different Approach

The regulatory scheme that Congress imposed through the 1988 Act was based upon the then-existing composition of the gray market, which was heavily weighted towards European vehicles, and the assumption that vehicle safety standards in other countries afforded less protection than the FMVSS. In that light, we established a regulatory scheme that applied to all gray market vehicles, without regard to the country of origin or the extent to which the vehicle complied with applicable safety standards. However, contemporary realities do not appear to require such a complex scheme in the majority of instances. Today, almost all (99.2 percent in 2001) gray market vehicles are imported from one country, Canada. In general, these vehicles are certified as complying with the CMVSS, which are nearly identical to the FMVSS. Yet the importation procedures established by the statute and our current regulations treat all noncomplying vehicles the same, whether they were manufactured in a country with safety standards virtually identical to the FMVSS or in a country with no vehicle safety standards at all.

In the NPRM, we proposed to make it easier to import for resale Canadian vehicles that are covered by a letter from the original manufacturer indicating that they are in compliance with all applicable FMVSS except for some labeling requirements of Standards Nos. 101, 110 or 120 (and, where applicable, the daytime running lamp (DRL) specifications of Standard No. 108), the same way we have been doing for vehicles imported for personal use. Most manufacturers of Canadian-certified vehicles had informed us which of their late-model vehicles conformed to the FMVSS except in these minor labeling respects, without making reference to DRLs. We proposed to identify these virtually-compliant Canadian vehicles as "Type 1 motor vehicles." We further proposed to require that the manufacturer's letter also include a statement of compliance with U.S. bumper and theft prevention standards. We proposed that a "Type 1 motor vehicle" be defined as follows:

> Type 1 motor vehicle means a motor vehicle that is certified by its original manufacturer as complying with all applicable Canadian motor vehicle safety standards and whose original manufacturer has informed NHTSA in writing that the vehicle complies with all applicable Federal motor vehicle safety, bumper, and theft prevention standards (except for the labeling requirements of Federal Motor Vehicle Safety Standards Nos. 101 and 110 or 120, and, if appropriate, S5.5.11 of Standard No. 108 (related to daytime running lamps)).

We proposed to add an Appendix A to Part 592 which would list by make, model, and model year the vehicles that would be Type 1 vehicles, to be revised from time to time to reflect an evolving universe. This list would provide RIs, Customs officials, and customhouse brokers with a ready reference of vehicles eligible to enter the United States as Type 1 vehicles.

Type 1 motor vehicles imported for resale would still have had to be imported by a RI, and the RI would have had to ensure that the vehicles met the DRL requirements of Standard No. 108, and were appropriately labeled to meet Standards Nos. 101 and 110 or 120.

Our proposal was generally supported by eight commenters, including an original vehicle manufacturer. However, the proposal was objected to, on legal, practical, and policy grounds, by ten commenters, including some original vehicle manufacturers, RIs, a customhouse broker, a law firm, an insurer, and the NICB.

The vehicle manufacturer's comment, which generally supported the proposal, recommended that Type 1 vehicle classifications be limited to car lines and models for which equivalent vehicles were available in both the United States and Canada for the same model year. The manufacturer stated that it would not furnish virtual compliance letters for vehicles certified for sale in Canada if it had offered no equivalent vehicles certified for sale in the United States in the same model year.

One commenter was concerned that original vehicle manufacturers might manipulate the importation process by withholding identification of vehicles that are Type 1. To prevent manipulation, this commenter suggested that original manufacturers be required to report to NHTSA the compliance status of their Canadian market vehicles vis-à-vis the FMVSS, and that penalties be imposed for any misrepresentations made in those reports. In our opinion, this approach is not feasible. We do not believe we have authority to impose such a requirement, particularly with respect to vehicle manufacturers outside the United States.

We note that the proposal assumed that most, if not all, vehicle manufacturers would provide letters reflecting virtual compliance. Since publication of the NPRM this assumption has been called into question, as many manufacturers have made it clear that they oppose the importation of their Canadian vehicles into the United States and that they will not do anything to facilitate such importations.

The primary legal issue raised by the commenters was that NHTSA lacks authority to allow importation of gray market vehicles of any sort without requiring a conformance bond. This argument is based upon Section 30141(d)(1), which specifies that "a person importing a motor vehicle under this section shall provide a bond * * * and comply with the terms [NHTSA] decides are appropriate to ensure that the vehicle—(A) will comply with applicable motor vehicle safety standards * * * within a reasonable time (specified by [NHTSA]) after the vehicle is imported. * * *" As noted in the comment from the law firm, the bond is required to ensure that all noncomplying vehicles imported by or through a RI are brought into compliance with all applicable FMVSS. Since Type 1 vehicles would be imported by or through a RI and must be conformed to meet applicable FMVSS, the comment asserted that NHTSA's attempts to relax the bonding requirement for one class of vehicle while retaining it for a second class of vehicle would be "arbitrary and capricious." In this commenter's opinion, elimination of the bonding requirement would not withstand judicial scrutiny because it is not supported by substantial evidence. In particular, the comment observed that NHTSA conducted no studies to support its position that Type 1 vehicles will be conformed in the absence of a bond. Another commenter contended that virtual compliance is technically the same as noncompliance.

The proposal was further objected to on the grounds that it would facilitate the importation of vehicles that have been "cloned." NICB identified these as vehicles "that have been unsafely rebuilt from cars that were 'totaled' in wrecks, or that contain unremedied safety defects, that were stolen from U.S. citizens, illegally exported to Canada, then returned with bogus vehicle identification numbers ('VINs'), or that were stolen from Canadian citizens." The commenter reported that "cloned" stolen or rebuilt salvage vehicles are already flowing into the United States with the rising tide of gray market imports from Canada. NHTSA's proposal would facilitate these scams, according to NICB. It would have the RI "keep custody of a 'gray market' vehicle, at least for the few days it would take to verify that the incoming vehicle is safe and not stolen, that it is not a dangerous 'zombie' or a stolen car that soon may be repossessed from an innocent American car buyer."

Another comment, by a customhouse broker, was that the creation of two categories of imported vehicles, one requiring a bond and the other not requiring a bond, would be confusing and create a burden for brokerage and Customs offices, as it would not be realistic for brokers and officers to know the differences between Type 1 and Type 2 vehicles. This commenter recommended retaining the bond for Type 1 vehicles but waiving the 30-day hold period.

There were also practical and policy objections to the proposed elimination of the bonding requirement. One commenter expressed concern that elimination of the bond may make it more difficult for NHTSA to ensure that safety recall campaigns are being completed on gray market vehicles. The commenter contended that by continuing to require the bond, NHTSA would be able to address the key concerns of whether the vehicle is safe and whether there is a viable RI standing behind the vehicle for 10 years.

After considering these comments, we have decided not to adopt the approach that we proposed. This means that the current bond requirements remain unchanged. We still seek to expedite importations of vehicles from Canada for resale, and intend to issue a notice in the near future reflecting a new approach.

III. The Rule Will Enhance Motor Vehicle Safety by Requiring Greater Accountability of Registered Importers

The second primary goal of this rulemaking is to achieve greater accountability and compliance with legal requirements on the part of RIs. The ability of RIs to capitalize upon the favorable Canadian exchange rate, the availability of vehicle models there that are marketable in the United States, and their desire to release vehicles promptly have resulted in conduct by some RIs that is not explicitly prohibited by Part 592, primarily because it was not contemplated in 1989 when we issued the regulation. We proposed a number of changes to Part 592 and announced several interpretations of the statute and existing regulations, in order to address these situations and to assure that the RI program operates efficiently under the circumstances existing today.

A. What Is Required to Register as a RI and To Maintain the Registration (Section 592.5)?

An entity that wishes to register as a RI must file an application with us as specified in 49 CFR 592.5(a). Moreover, at the time an RI submits its annual fee, as required by 49 U.S.C. 30141(a)(3), it must file a statement in which it affirms that the information provided in its application remains unchanged. 49 CFR 592.5(e).

We have concluded that the present registration procedures must be revised and expanded in order to increase the likelihood that a RI will be technically and financially able to perform its duties. As addressed both in the NPRM and below, based on experience gained over the years, we will require more information from a person seeking to be a RI than was originally required. Moreover, we need to obtain this supplemental information from each existing RI. Because a RI who was registered before the application requirements are amended cannot affirm the continuing correctness of information that it has never furnished, we have concluded that the most appropriate way to ensure that the required information is provided is to require that existing RIs, as a condition of maintaining their existing registration, provide the additional information called for in the final rule not later than November 1, 2004, the first business day that is at least 30 days after the effective date of the amendment.

1. Sec. 592.5(a)(3)–(5): A Post Office Box or Foreign Address Is Not an Acceptable Address for a RI; The Application Must Provide Social Security Numbers for Certain Individuals; The Application Must Identify Officers Authorized To Certify Compliance to NHTSA

Section 592.5(a)(3) currently requires the applicant to provide its "address," among other information. Two issues have arisen with respect to this requirement: whether a RI may give a post office box as its sole address, and whether a Canadian address is acceptable.

We tentatively answered in the negative the question of the sufficiency of a post office box as the sole address for an RI, proposing that the application set forth:

(3) . . . the full name, street address, and title of the person preparing the application, and the full name and street address, e-mail address (if any), and telephone and facsimile (if any) numbers in the United States of the

person for whom application is made (the "applicant").

We discussed potential difficulties in dealing with RIs who are located in Canada. We explained that we had not required that principals of a RI be citizens of the United States, and we had registered several RIs who have used mailing addresses in Canada, requiring them to maintain facilities in the United States where conformance work is performed and records are kept. We concluded that if the RI is an entity organized under the laws of any State (*e.g.*, corporation, partnership, sole proprietorship), it may be legally served at the street address of the United States facility it has provided us, even though its principal(s) may reside in Canada. The question of the adequacy of service may differ, however, if the RI is an entity that is not organized under the laws of any State; that is to say, if it is a sole proprietorship, a partnership, or a corporation organized under the laws of Canada.

The Safety Act provides a mechanism to assure that non-resident manufacturers, which includes importers for resale, can be served with orders and other process issued by the agency, by specifying that a manufacturer "offering a motor vehicle or motor vehicle equipment for import shall designate an agent on whom service of notices and process in administrative and judicial proceedings may be made." 49 U.S.C. 30164(a), implemented by 49 CFR 551.45, *Service of process on foreign manufacturers and importers*. This regulation requires "any manufacturer, assembler, or importer of motor vehicles" to "designate a permanent resident of the United States upon whom service of all processes, notices, orders, decisions, and requirements may be made for him and on his behalf. * * *" 49 CFR 551.45(a). As a RI is an "importer of motor vehicles," we proposed to require an applicant organized under the laws of another country to file a designation of agent in the form specified in Section 551.45 before we register it as a RI (proposed Section 592.5(a)(5)(v)).

This would not relieve the RI from maintaining required facilities and records within the United States. To assure our ability to locate those facilities and records, we proposed (Section 592.5(a)(5)(ii)) to require an applicant to include the street address of each of its facilities in the United States, including the location of the records that it is required by this part to keep, and the street address that it designates as its mailing address. We also proposed (Section 592.5(a)(5)(iii)) that an applicant provide a copy of its business license or other similar document authorizing it to do business as an importer, or modifier, or seller of motor vehicles (or a statement that it has made a bona fide inquiry and is not required by such state or local law to have such a license or document).

In addition, we proposed (Section 592.5(a)(5)(iv)) that the applicant provide the name of each of its principals who is authorized to submit conformity certifications to NHTSA, and the street address of the repair, storage, or conformance facility where each identified principal will be located.

Proposed Section 592.5(a)(3), which would require RI applicants to state their street addresses and telephone numbers in the United States, was supported by five commenters. Two commenters were concerned that NHTSA might no longer allow Canadians to serve as RIs. Both these commenters felt that NHTSA would be able to adequately regulate Canadian RIs, either through their designated agents in the U.S. or through rules of civil procedure in all Canadian provinces, which allegedly allow for service by American entities on Canadian persons. We wish to assure these commenters that it is not the intent of this rule to exclude Canadian entities from becoming, or continuing to be, RIs. However, it is imperative that we be able to readily inspect all premises in the United States where RIs are conducting operations under NHTSA's regulations, and be able to mail legal communications to Canadian-based RIs or their designated agents at those premises. Moreover, historically some entities have not designated agents pursuant to 49 CFR 551.45, or have not updated agent addresses.

We will mail notices of proposed suspensions, both automatic and non-automatic, to the address in the United States that the RI provided in its application, and if these notices are returned to us as undelivered or undeliverable, we shall proceed with the suspension. A commenter observed that the enforcement and collection of fines and penalties might be an issue where ownership of a RI is outside the United States. We agree. The administration of the 1988 Act is best served by having all RIs maintain mailing addresses in the United States, which will forestall any question as to NHTSA's extra-territorial inspection, order, and collection authority. We are therefore adopting Section 592.5(a)(3) as proposed.

In Section 592.5(a)(4), we proposed that applicants provide the social security numbers of their principals or partners and persons authorized to sign certification submissions to NHTSA. The purpose of this provision was to allow us to determine whether any person associated with an applicant has ever been convicted of a misdemeanor or felony involving motor vehicles or the motor vehicle business, such as title fraud, odometer fraud, auto theft, or the sale of stolen vehicles. If we discovered that there was such a person associated with an applicant, we could deny the application after considering the severity of the offense and the prospective role of the associate in operating the RI's business. Two commenters supported denying registration to applicants who have a felony record involving motor vehicles or the motor vehicle business. No comments were filed in opposition. Accordingly, we are adopting the requirement for provision of social security numbers with RI applications. If these numbers are not provided, the application will be denied.

In Section 592.5(a)(5)(iii) we proposed that an applicant provide a copy of its business license or other similar document authorizing it to do business, or a statement that it has made a bona fide inquiry and is not required by state or local law to have such a license or document. Three commenters agreed with the proposal, and no one opposed it. One specified that the license should be that of a motor vehicle repair facility and that at least one employee should be a licensed mechanic. Another commented that RIs be required to be licensed as manufacturers if their states license such activity. However, these comments did not include any information or data on the scope of state licensing requirements, and we have no present basis upon which to adopt such requirements.

Upon review, we have concluded that there is an overlap between proposed Section 592.5(a)(5)(iii) and proposed Section 592.5(a)(9)(ii), which, among other things, would require the applicant to provide a copy of a license to do business at each facility that it identifies under that subparagraph. Accordingly, the final rule amends Section 592.5(a)(5)(iii) to specify that the applicant will provide a copy of the business license, or inquiry statement, with respect to each such facility. Section 592.5(a)(9)(ii) will therefore not include such a requirement.

In Section 592.5(a)(5)(iv), we proposed that an applicant provide the name of each principal that would be authorized to sign conformity statements to NHTSA and the street address of the repair, storage, or conformity facility where each such

principal would be located. There was one comment on this proposal, agreeing that conformity statements should be signed and submitted by a principal of a RI. This comment also supported including this requirement as a duty of a RI as we proposed under Section 592.6(d)(3). Accordingly, we are adopting both proposals.

These provisions will ensure that there is a designated person who will be accountable for the veracity of the certification and its submission. It is very important from a safety perspective that imported vehicles meet applicable Federal motor vehicle safety standards and that all recall work be performed. Toward that end, it is critical that a principal assure that these requirements are met. Such a designated person should be fully conversant with NHTSA regulations, such as the FMVSS, recall administration, the prohibitions against affixing a certification label to a vehicle outside the United States and shipping a vehicle to a facility other than the RI's after the vehicle has entered the United States, and the need to retain the vehicle until the bond is released.

In the final rule, in Section 592.4, we are defining "principal" to mean, with respect to a RI: If a corporation, an officer; if a partnership, a general partner; and if a sole proprietorship, the individual who is the sole proprietor. In addition, as proposed, the term includes a director of a corporation and any individual whose ownership interest is 10 percent or more.

2. Defining "Service Insurance Policy" and "Independent Insurance Company" To Best Ensure That Owners Will Be Able To Have Noncompliances and Safety-Related Defects Remedied Without Charge

Under present Section 592.5(a)(8), an application must contain a copy of a contract to acquire, effective upon registration as an importer, a prepaid mandatory service insurance policy underwritten by an independent insurance company (or a copy of such policy) to ensure that the applicant will be able financially to remedy safety-related defects in the vehicles that it imports or conforms.

In the context of Section 592.5(a)(8) we proposed definitions for the terms "service insurance policy" and "independent insurance company" to address our concerns.

A "service insurance policy" would be defined as any policy issued or underwritten by an independent insurance company which covers a specific motor vehicle and guarantees that any noncompliance with a Federal motor vehicle safety standard or safety-related defect determined to exist in that vehicle will be remedied without charge to the owner of the vehicle. An "independent insurance company" would be defined as an entity that is registered with any State and authorized thereby to conduct an insurance business, none of whose affiliates, shareholders, officers, directors, or employees, or persons in affinity with such, is employed by, or has a financial interest in or otherwise controls or participates in the business of a RI to which it issues or underwrites such policies. The phrase "in affinity with such" includes but is not limited to family members such as spouses, parents, children, or in-laws.

One commenter was of the view that "the use of terms such as 'backed by,' 'issued by,' 'underwritten by,' and 'reinsured by' can be somewhat ambiguous when used out of context," going on to say that "the nature and extent of the 'backing' or 're-insurance' is not defined." (We note that these terms were addressed in the preamble discussion of the issue without specific proposed definitions.) In this commenter's opinion, it would be possible for such backing or reinsurance "to cover only a portion of the policy limit(s)." The commenter recommended that "the underwriter named on each policy actually themselves be an insurance company," and that "NHTSA allow the Department of Treasury to evaluate these insurers as is done with the DOT bond." The commenter cited Treasury Circular 570 as containing a list of approved companies. In its view, "this would ensure that issuers of service insurance policies (where the motoring public is at financial risk) are not held to a lower standard than are issuers of DOT Bonds (where the U.S. Government is at financial risk)." Although we believe that the comment is well taken, such a requirement would be beyond the scope of our proposal. We will consider addressing this issue in the NPRM mentioned above.

Another commenter suggested that an "independent insurance company" not only be registered with a State and authorized to conduct an insurance business in that State, but that it also be authorized to conduct the line of business under which the policy falls. We concur with this recommendation. Such an amendment emphasizes our intent that such policies be honored in the event the insurer is called upon to do so. Accordingly, we are modifying the definition of "independent insurance company" to define it in pertinent part as "an entity that is registered with any State and authorized by that State to conduct an insurance business including the issuance or underwriting of a service insurance policy * * *."

We did not specifically request comments on whether the amount of coverage presently provided ($2,000 per vehicle) should be increased. One commenter considered the amount adequate. Another thought that the limit should be raised to an amount equal to the "full retail price of the vehicle," to insure that the remedial options of replacement with an equivalent vehicle or refunding the purchase price could be achieved. Such an increase is beyond the scope of the proposal. Moreover, there has been no need demonstrated since 1989 for an increase in the amount of coverage per vehicle, even accounting for inflation.

Only one comment was submitted in response to our question about whether there might be an alternative to the service insurance policy, such as a bond equal to 5 percent of the dutiable value of the vehicle. In the commenter's view, if such a bond were required, original vehicle manufacturers may decline to perform recall remedy work "for free if they can be paid for it." Because most, if not all, manufacturers have authorized their franchised dealers in the United States to perform recall remedial work on vehicles of the same make, imported from Canada, at no charge to the owner, owners have not been experiencing problems related to obtaining recall remedies. For this reason, and the lack of public comment, we have concluded that there is no reason to switch to a different approach.

Three commenters stated that the rule needs to address the importation of vehicles with outstanding Canadian liens because State vehicle registrars are not requiring this information. In the view of one commenter, this creates the potential for cross-border fraud. The solution suggested by the commenter is a Federal regulation requiring RIs to conduct lien searches across Canada and then to provide a statement regarding this research on each vehicle they import. We have concluded that imposing such a duty under Section 592.6 would be beyond the scope of our NPRM, but will consider addressing it in the forthcoming NPRM.

3. Section 592.5(a)(9): An Applicant Must Demonstrate Its Technical Ability To Perform Conformance Work

The original "gray market" provisions of the Safety Act, in effect from 1968 to 1990, emphasized the responsibility of the importer to bring imported nonconforming vehicles into compliance with U.S. requirements but was silent regarding the qualifications of

the importer/modifier. In the 1988 Act, Congress rejected the 20-year practice of leaving conformers of motor vehicles unregulated, and enacted a statutory scheme under which only RIs may conform noncompliant vehicles. The statute directed NHTSA to establish procedures and requirements that, among other things, ensure that the RI "will be able technically" to carry out conformance and recall repair work. 49 U.S.C. 30141(c)(1)(C). The underlying intent was that a Federal agency would review the qualifications of each RI to bring vehicles into compliance with the FMVSS and to repair those that are included in safety recall campaigns if they have not been remedied by the fabricating manufacturer.

As reflected in existing 49 CFR 592.5(a)(9), we currently require an applicant to demonstrate that it will be "technically able [to remedy a noncompliance or safety-related defect] through repair." However, the current regulation does not specifically address the technical ability of the applicant to conform vehicles or the sufficiency of its facilities to do so. Therefore, we proposed to amend Section 592.5(a)(9) to require an applicant to submit information sufficient to demonstrate to us that it has the technical ability to bring vehicles into compliance with safety, bumper, and theft prevention standards, and to perform recall repairs on vehicles. This information could include a discussion of the applicant's facilities, its experience repairing vehicles, and the qualifications of its personnel.

To demonstrate ownership or lease of facilities adequate for the conformance, repair, and storage of vehicles, under proposed Section 592.5(a)(9)(ii) an applicant would have to provide a copy of the lease agreement or ownership document relating to each such facility. We also proposed that the applicant provide a copy of a license or other similar document issued by an appropriate local authority permitting the applicant to do business as an importer, or modifier, or seller of motor vehicles, or, alternatively, a statement by the applicant that it has made a bona fide inquiry and is not required by state or local law to have such a license. As noted above, this provision overlapped a requirement included in Section 592.5(a)(5)(iii), and we are addressing it in that section.

We are authorized to inspect the conformance, storage, and record-keeping facilities of an applicant to assist us in deciding whether to approve a RI application. 49 U.S.C. 30141(c)(1)(B) and 30166. In some instances, we have conducted an on-site inspection to judge the technical competence of an applicant; in others, we have relied on the description provided in the application. To reduce the need to conduct on-site inspections and to expedite the process, we proposed to require an applicant to submit still or video photographs of each of its facilities where vehicles would be conformed, remedied in safety recall campaigns, and stored prior to their release.

Five commenters addressed proposed Section 592.5(a)(9). Two of these commenters wanted us to allow RIs to have contractors perform conformity work, one asserting that it was unrealistic for the agency to expect RIs to possess the facilities, technical expertise, and equipment to perform all required repairs and modifications on the vehicles that they import. This comment recommended that an applicant demonstrate that it has access to licensed dealer service departments and licensed professionals that have the facilities to modify or repair the vehicles it has imported.

A third commenter supported the proposal that RIs submit proof that they own or lease facilities that are adequate to fulfill a RI's duties. This commenter and another also recommended that we require that a RI be specifically licensed to operate as a motor vehicle repair facility and to have at least one employee who is a licensed mechanic in the state where the RI is located. Finally, one commenter was of the view that a RI's employees should be required to provide proof of their immigration status if they were not U.S. citizens.

In 1989 we proposed allowing RIs to contract out conformance work, but we did not adopt this proposal, and we are even less inclined to do so now. We have concluded that the statute is best implemented by placing the RI's responsibilities squarely on the RI itself. Congress replaced the previous regulatory scheme under which an importer of a gray market vehicle was free to have conformance work performed by any entity, regardless of its qualifications, with a scheme under which conformance work done would be done by an entity which had demonstrated to NHTSA its "technical ability" to perform that work. Permitting a delegation of conformance work would be inconsistent with this statutory goal and would dilute the direct accountability of a RI for vehicle modifications. We are aware of past instances in which RIs have contracted with other repair shops to replace odometers and speedometers calibrated in metric units with those calibrated in miles and miles per hour. The agency has directed those RIs to desist from this practice to ensure that the RI is responsible for any safety problems that may arise from the installation and for the accuracy of the odometer reading on the replaced unit.

As for the suggestions that at least one principal or employee should be licensed as a mechanic in the state where the RI facility is located, we are not adopting this as a requirement. As indicated above, we have not been provided, and, at this time, we are not conversant, with the laws of the various states that relate to this issue, and there may be some that do not require licensing of auto repair mechanics. Further, the proposal did not ask for comment on this specific question. However, the fact that a principal or employee has been issued such a license or certificate is the type of information that an applicant could submit in support of its argument that it has the technical ability to conform vehicles. Should the licensee's employment or affiliation with a RI terminate, that fact would have to be reported to us as a change in relevant circumstances, as required by new Section 592.5(f).

As for the comment that non U.S.-citizen employees of RIs should have to provide proof of their immigration status, we note that we did not propose such a requirement nor did the Immigration and Naturalization Service (or, as it is now named, U.S. Citizenship and Immigration Services) inform us of the desirability of such a requirement. In any event, we are reluctant to add requirements that appear to have little relevance to the "technical ability" of a RI to conform or repair motor vehicles.

4. Section 592.5(a)(11): An Applicant Must Understand the Duties of a RI

At present, Section 592.5(a)(11) requires an applicant to state that it will fully comply with the duties of a RI as set forth in Section 592.6. We have proposed additions to, and clarifications of, the duties of a RI, and, in this light, proposed an amendment of Section 592.5(a)(11) to require an applicant to state that it has read and understood the duties of a registered importer as set forth in 49 CFR 592.6 and that it will fully comply with each such duty.

No commenter addressed this issue. We are adopting Section 592.5(a)(11) as proposed.

5. Section 592.5(b): How NHTSA Will Treat an Incomplete Application

Under the present regulation, if the information submitted by an applicant is incomplete, the Administrator notifies the applicant of the areas of

insufficiency and that the application is being held in abeyance.

We proposed a clarification under which the Administrator would notify the applicant of the "information that is needed" in order to complete the application, and that the Administrator would not give further consideration to the application until the information is received.

We received one comment in support of this proposal. No other comments were received on the issue, and we are adopting Section 592.5(b) as proposed.

This section applies to new applications only. If an existing RI fails to file additional required information by November 1, 2004, as required by new Section 592.6(r), discussed below, the Administrator may automatically suspend the registration, pursuant to Section 592.7(a)(4). Further, if an existing RI fails to file an annual statement as required by Section 592.6(l), the Administrator may suspend the registration, pursuant to Section 592.7(b)(1).

6. Section 592.5(e): Denial of Applications

We received no comments on our proposed amendments to this section and are adopting them as proposed.

Under these amendments, we are removing from present Section 592.5(d) and placing in a new subsection (e) provisions related to denial of RI applications and refunds of certain components of the initial annual fee.

At present, the regulation states only that "If the information [in the application] is not acceptable, the Administrator informs the applicant in writing that its application is not approved." We are expanding this in several ways.

We currently require an applicant to state that it has never had a registration revoked pursuant to Section 592.7 (Section 592.5(a)(6)). We are continuing this requirement and are restating Section 30141(c)(3) as well by specifying that we shall deny registration to an applicant whose registration has previously been revoked (new Section 592.5(e)(1)).

We also currently require an applicant to state that it is not and was not "directly or indirectly, owned or controlled by, or under common ownership or control with, a person who has had a registration revoked" (Section 592.5(a)(6)). We are continuing this requirement and refer to the portion of Section 30141(c)(3) that specifies that we may deny registration to an applicant that is or was owned or controlled by, or under common ownership or control with, a RI whose registration has been revoked. For example, if we revoke the registration of a corporate RI that had four officers, we shall deny registration to an applicant in which any one of the four individuals, or specified family members, is involved.

Under the current regulation, each RI's application must include the "names of all owners, including shareholders, partners, or sole proprietors" (Section 592.5(a)(4)), and, if an owner is a corporation, "the names of all shareholders of such corporation whose ownership interest is 10 percent or greater" (Section 592.5(a)(5)). The RI is required to inform us of any change in the ownership information it has provided (Section 592.5(f)). Thus, under the present regulation, there is some information that can be used to compare the ownership interests of a RI whose registration has been revoked with those of an applicant. However, the present regulation, in our view, may not be sufficient to cover situations where an application is filed by person(s) who may be influenced by a revoked RI, or its shareholders, principals, partners, or employees, and whose name may not have appeared on that RI's application. For example, this would include a spouse, in-law, child, partner, substantial shareholder, or employee. Thus, the amended regulation will also require an applicant to state whether any of its shareholders, officers, directors, employees, or family members of such individuals had been previously affiliated with a RI in any capacity (e.g., major shareholder, partner, participant in the business), and, if so, to state the name of the RI and the capacity.

Under the amended rule, NHTSA's denials of RI applications will be in writing and include the reasons for the denial. Applicants will be specifically permitted to submit a petition for reconsideration of the denial within 30 days (Section 592.5(e)(3)), and the denial will be in effect until the petition is acted upon.

7. Section 592.5(f): The Due Date for the RI's Annual Statement and Fee Will Be September 30

No comments were received on the amendments proposed for Section 592.5(f) and they are adopted as proposed.

Under these amendments, present subsection (e) is redesignated subsection (f). Under 49 U.S.C. 30141(a)(3), a RI must pay an annual fee "to pay for the costs of carrying out the registration program for importers * * *." The annual fee covers a fiscal year, October 1 through September 30 of the year following. At present, the fee, along with the RI's statement that affirms that information provided to the agency remains correct and that it continues to comply with applicable requirements, must be filed and paid not later than October 31 of each year. This is a month after the beginning of the fiscal year. Moreover, Section 592.7(a) now provides that we may not revoke or suspend a registration until the 31st calendar day after an unpaid fee is due and payable. The 31st calendar day after October 31 is December 1. This means that a RI that does not pay its annual fee has a "free ride" to continue to operate for two months into the fiscal year.

To address this anomaly, we are amending the present provisions to require payment of the annual fee, and submission of the annual affirmation statement, not later than September 30 of each year, to cover the next fiscal year. In addition, as discussed in more detail below, we are amending Section 592.7(a) to specify that we may automatically suspend a RI's registration if the annual fee has not been paid by the close of business on October 10 or, if October 10 falls on a weekend or a holiday, the next business day.

8. Transfer of Current Section 592.5(f) to new Section 592.6(m): RIs Must Notify NHTSA of Changes of Information Provided in Their Applications

Under current Section 592.5(f), a RI must notify us within 30 days of any change in the information provided in its application. This is a duty and, as such, is more appropriately located in Section 592.6, Duties of a registered importer. Therefore, we are designating it as new Section 592.6(m).

9. Section 592.5(h): How NHTSA Will Treat Applications Pending on the Effective Date of the Final Rule

We received no comments on our proposed Section 592.5(h) and are adopting it as proposed.

This section addresses how we will treat RI applications that are pending when this final rule becomes effective. Under subsection (h), if the application does not contain all the information that is required by Section 592.5(a) as amended by the final rule, we shall defer further consideration of the application until the information is received. Potential and pending applicants are advised to begin preparation of all newly-required information promptly following publication of this rule.

B. Bonding, Conformity, Certification, and Other Duties of a Registered Importer (Section 592.6)

The obligations of a RI are set forth in Section 592.6. The NPRM represented our tentative decision that several provisions in that section should be amended or clarified, and that several more needed to be modified to reflect the establishment of different Types of motor vehicles (Type 1 and Type 2). Therefore, we proposed revising Section 592.6 in its entirety.

The present duties of a RI under Section 592.6 may be summarized as follows, by their subsection:

(a) bond requirements;
(b) recordkeeping;
(c) conformance records after initial certification for same make, model, and model year has been submitted;
(d) certification of conformed vehicles;
(e) certification to NHTSA;
(f) substantiation of certification;
(g) obligation to notify and remedy;
(h) requirement to admit NHTSA representatives for inspection;
(i) maintenance of prepaid mandatory service insurance policy; and
(j) obligation upon failure to conform vehicles.

We are adopting the following structure of subsections for Section 592.6:

(a) conformance and bond requirements;
(b) recordkeeping;
(c) certification of conformed vehicles;
(d) certification documentation to be submitted to NHTSA for motor vehicles;
(e) acts prohibited before bond release;
(f) furnishing the service insurance policy with the vehicle;
(g) odometer disclosure requirements;
(h) obligation to export or abandon a vehicle upon failure to conform it;
(i) obligation to provide notification of and remedy for safety-related defects and noncompliances, and to submit related reports to NHTSA;
(j) requirement to admit NHTSA representatives for inspection;
(k) requirement to provide an annual statement with fee;
(l) notification to NHTSA upon change of information provided in application; prior notice of change of facility;
(m) assurance that at least one full-time employee is present at each facility;
(n) prohibition against co-utilization of employees, or conformance, repair, or storage facilities with any other RI;
(o) timely response to NHTSA information requests;
(p) timely payment of fees; and
(q) provision not later than 30 days after effective date of final rule of information required of new RI applicants.

We discuss below the requirements we have adopted.

1. Section 592.6(a): A RI Must Ensure Conformance of All Imported Vehicles With Safety, Bumper, and Theft Prevention Standards and Furnish a Conformance Bond

Under current Section 592.6(a), a RI must "furnish to the Secretary of the Treasury (acting on behalf of the Administrator)" a bond to assure that it will bring a nonconforming vehicle into conformity with the FMVSS within 120 days of entry. We proposed to amend subsection (a) to make explicit that a RI must bring each vehicle under bond into conformity and that a RI must assure that any vehicle that it imports for resale has been deemed eligible for importation by the Administrator pursuant to Part 593 (this would include any pre-determination vehicle that a RI originally imported under 49 CFR 591.5(j)(1) for the specific purpose of developing conformance modifications to support an eligibility petition). The obligation to conform the vehicle would explicitly cover conformance with any Federal bumper and theft prevention standards applicable to the vehicle.

We asked for comments on whether 120 days was needed to bring Canadian Type 2 vehicles into conformity. Given our decision to dispense with different requirements for different vehicle types, we will retain the 120-day period for all vehicles.

Until now, Part 592 has been silent on the RI's responsibility to ensure conformance with the Theft Prevention Standard, though the matter is addressed in Part 567, the certification regulation. It is a violation of Federal law to import motor vehicles that do not comply with safety and bumper standards, but in each case the statutory prohibition does not apply if the vehicles have been determined to be capable of complying and are brought into conformity after importation (See 49 U.S.C. 30112, 30146, and 32506). It is also a violation of Federal law to import a vehicle subject to the Theft Prevention Standard that does not comply with that standard (see 49 U.S.C. 33114), but Section 33114 provides no exceptions that would allow post-importation conformance. Thus, we have applied Section 33114 to require a vehicle to meet the Theft Prevention Standard at the time of entry, and have not allowed conformance after a vehicle has been imported.

We have implemented this through our certification regulation (49 CFR Part 567): If a RI imports a passenger car or multipurpose passenger vehicle from a line listed in Appendix A of 49 CFR Part 541, Federal Motor Vehicle Theft Prevention Standard, and the original manufacturer has not affixed a label meeting the requirements of Section 567.4(k), the RI is required to inscribe the Vehicle Identification Number on certain parts (Section 541.5(b)(3)), and to affix a label meeting these requirements before the vehicle is imported (Section 567.4(k)). We proposed to allow post-entry conformance on the basis that it might be difficult outside the United States to mark parts or to take other actions needed to certify compliance with the theft prevention standard.

The purpose of the Theft Prevention Standard "is to reduce the incidence of motor vehicle thefts by facilitating the tracing and recovery of parts from stolen vehicles" (Section 541.2). We viewed it as unlikely that an imported vehicle subject to the Theft Prevention Standard would be stolen while in the custody of a RI. The NPRM represented our tentative conclusion that the purpose of the standard would not be compromised by allowing a RI to bring a vehicle into compliance after its entry and before its sale for on road use, during the period when the RI is conforming and certifying vehicles to the safety and bumper standards.

NICB objected to this tentative conclusion. It remarked that "after * * * acknowledging that [the] statute 'provides no exceptions,' NHTSA proposes nonetheless to create an exception to allow importation of vehicles from lines that are subject to the parts-marking requirement, but that were not marked. This proposal flatly contradicts Congress' mandate, and NHTSA identifies no statutory authority * * *." NICB further asserted that even if NHTSA had authority "to allow non-parts-marking-compliant 'gray market' vehicles into the United States, it is not possible to implement the proposed rule" without undercutting enforcement efforts to arrest those who profit from vehicle theft. NICB claimed that NHTSA's statement that it is unlikely that an imported vehicle subject to the parts-marking standard will be stolen while in the possession of a RI "misses the point * * *. If a marked vehicle was stolen in the United States and re-imported, the major parts—including one in a 'secret' location—will be marked with a VIN different from the number on the VIN plate." NICB

concluded that, by allowing non-conforming vehicles to enter the country, "NHTSA would unwittingly establish a new industry to create non-factory markings for major parts."

We have carefully considered this comment. We observed in the NPRM that the Theft Prevention Act did not provide any authority for post-importation conformance.

The Theft Prevention Act stands in strong contrast to the statutes authorizing the FMVSS and the Bumper Standard. 49 U.S.C. 30112(a) prohibits the importation of motor vehicles that do not conform, and are not certified as conforming with all applicable FMVSS, except as provided in Sections 30141 *et seq.* These sections allow importation of vehicles that do not conform to the FMVSS provided they will be brought into conformance by RIs.

49 U.S.C. 32506(a) prohibits the importation of a passenger motor vehicle that does not conform to the Bumper Standard, except as that section may provide. Section 32506(c) authorizes the issuance of regulations providing for post-importation conformance of passenger motor vehicles with the Bumper Standard.

Section 33114(a)(1), on the other hand, prohibits importation of a motor vehicle subject to the Theft Prevention Standard "unless it conforms to the standard." Unlike Sections 30112(a) and 32506(a), Section 33114(a)(1) establishes no exceptions of any nature. Given the explicit exceptions in two other statutes that we administer relating to the manufacture of motor vehicles to comply with Federal standards and the importation of these vehicles into the United States, we have decided that we cannot find an implicit exception in the third such statute. It is manifestly clear that Congress intended that a vehicle to which the Theft Prevention Standard applies must comply with that standard before being admitted into the United States. Accordingly, we are not adopting that aspect of the NPRM.

2. Section 592.6(b): Recordkeeping Requirements

For the most part, existing recordkeeping requirements will be retained, and the relatively minor changes proposed in the NPRM will be adopted. However, we will not need to include references to different "Types" of motor vehicles, as we had proposed.

We are clarifying that all records must be kept as hard copies (not electronically) at the facility in the United States identified by the RI in its application. Such records include copies of certifications of conformity submitted to NHTSA. The use of the term "the facility" means that all required records must be stored at a single location.

One commenter disagreed with our proposal that all documents be stored in the United States. In its view, documents stored in Canada can still be provided by a RI upon NHTSA inquiry, and that if a RI fails to produce them, NHTSA has the same remedy as it has for a RI who fails to produce records stored in the United States.

The question of NHTSA access to records is not limited to whether a RI will produce them upon request, but extends to whether NHTSA may readily inspect the records if it wishes to do so. By requiring that RI records be kept in the United States, we avoid any issue of whether NHTSA has the right to inspect records in a country outside the United States, and any cumbersome procedures and delays such inspections could entail. We are therefore adopting the final rule on this point as proposed.

In addition to documenting eligibility, conformity, and proof that the needed work has been done, one of the primary purposes of recordkeeping is to provide a ready means of identifying vehicles that a RI must remedy without charge in the event of a future defect or noncompliance determination. Under 49 U.S.C. 30120(g), as amended by the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act (Pub. L. 106–414), effective November 1, 2000, the period of free remedy for vehicles has been increased from 8 to 10 years. See amendments to 49 CFR 592.6(g)(1), 65 FR 68109–10, November 14, 2000. Thus, new Section 592.6(b) will require relevant records to be maintained for 10 years from the date of entry.

3. Section 592.6(c): Only a RI May Affix a Certification Label to a Vehicle After it Is Conformed; The RI Must Affix the Certification Label at Its Facility Inside the United States

Under 49 U.S.C. 30146(a)(3), "each registered importer shall include on each motor vehicle * * * a label prescribed by the [Administrator] identifying the importer and stating that the vehicle has been altered by the importer to comply with the standards applicable to the vehicle." We implemented this section by present Section 592.6(d), which requires the RI, upon completion of compliance modifications, to permanently affix a certification of compliance label to the vehicle that meets the requirements of 49 CFR part 567, and to provide to us a photograph of the label affixed to the vehicle. These requirements will be continued in amended Section 592.6(c), and modified as discussed below.

Two issues have arisen with respect to gray market vehicle certification: Who may affix the certification label, and whether the certification label may be affixed outside the United States if compliance work is completed before importation.

In some instances, we have discovered that a RI had not taken possession of the vehicles it had imported and was shipping its certification labels to a customer without having actually seen the cars it was purporting to modify and certify. We had made it clear, in the preamble to the final rule adopting Part 592, that a RI may not contract to have another person conform a vehicle for which it is the importer of record (54 FR 40063 at 40066). For similar reasons, it is improper for a RI to delegate the responsibility to affix the certification label.

In every instance, the proper course of action for a RI is to take physical possession of the vehicle, perform all necessary conformance modifications at a facility that it has identified to NHTSA in its application to become a RI, and only then and there affix the certification label.

Of course, if modifications had been made while the vehicle was still in a foreign country, those modifications would not have to be repeated by the RI in the United States. Under all circumstances, however, the RI must affix its certification label to the vehicle at its conformance facility in the United States after the vehicle has been brought into compliance, and all necessary recall remedies have been performed. We therefore proposed Section 592.6(c), which would require that all necessary conformance work be performed at a facility that the RI has identified to NHTSA for that purpose and that the certification label be permanently affixed at that facility after all appropriate modifications and recall work are performed on the vehicle.

No commenter objected to our proposal to require that the certification label be affixed only by the RI, and we will adopt that requirement as proposed. With respect to the location at which conformance work could be performed, two commenters agreed with our proposal, one remarking that a RI should not be allowed to do conformance work and affix the certification label while the imported vehicle is on a car carrier, and that the vehicle should be required to be on the ground and physically within the RI's facility.

However, a third commenter (with a fourth concurring) argued that there is no reason to prohibit RIs from affixing a certification label outside the United States. In its view, safeguards are in place because of the requirement that a conformance bond be posted for each vehicle.

We cannot allow a RI to both conform and certify vehicles outside the United States. To do so would risk losing a considerable amount of control over the RI program. The person responsible for certifying a gray market vehicle must be subject to our direct jurisdiction for purposes of enforcing the statutory prohibitions against false and misleading certification, and to respond to our inquiries regarding certification submissions. Were we to allow certification outside the United States, there would be little reason to require a RI to maintain a facility in the United States for the rare occasion when it might have to remedy a noncompliance or safety-related defect. Moreover, allowing grey market vehicles to be certified outside the United States by a person other than their original manufacturer could result in some instances in their inadvertent importation into the United States without bond, contrary to 49 U.S.C. 30112(a), which allows unbonded entry only for vehicles that have been certified by their original manufacturers. Should such an entry of a gray market vehicle occur, an unbonded vehicle might not be held for 30 days after submission of the conformance package and we would have no basis upon which to demand export if the vehicle were found to be noncompliant. Accordingly, we specify in Section 592.6(c) that certification labels may be affixed only in the United States.

4. Section 592.6(d): Documentation That RIs Must Submit to NHTSA

Currently, Section 592.6(f) specifies a limited amount of information that must be submitted to NHTSA with the RI's conformance certification, and provides that the RI must also submit "such information, if any, as the Administrator may request." The material that is submitted is known as the "conformity package." Over the years, we have requested that a number of additional items be submitted with the conformity package, such as the reading on the vehicle's odometer at the time of certification, and we have advised the RIs of these items through informal communications, such as a newsletter from our Office of Vehicle Safety Compliance. We have decided that it would be more appropriate to include these items in revised Section 592.6 so that there will be no doubt or confusion about what is required.

We proposed two separate sets of requirements to apply to Type 1 and Type 2 motor vehicles. Since we have decided not to proceed with that approach, we will have only a single set of requirements, *i.e.*, those that were set out in proposed Section 592.6(d) as applying to Type 2 motor vehicles admitted to the United States under bond.

We did not receive any comments with respect to the items to be included in the conformity package. We are therefore adopting new Section 592.6(d)(6) as proposed, with the exception that the RI will not state that it has brought the vehicle into conformity with the Theft Prevention Standard. Thus, the initial conformity package submitted to NHTSA by each RI for a given model/model year vehicle must contain (i) the make, model, model year and date of manufacture, odometer reading, VIN, and Customs Entry Number, (ii) a statement that the RI has brought the vehicle into conformity with all applicable Federal motor vehicle safety and bumper standards, and a description, with respect to each standard for which modifications were needed, of how it has modified the vehicle (this means that the initial conformity package could not simply utilize a form in which boxes are checked to indicate conformance), (iii) a copy of the bond given at the time of entry to ensure conformance, (iv) the vehicle's vehicle eligibility number (indicating that NHTSA has found the vehicle eligible for importation), (v) a copy of the HS–7 Declaration form executed at the time of the vehicle's importation if a Customs broker did not make an electronic entry with Customs, (vi) true and unaltered front, side, and rear photographs of the vehicle, (vii) true and unaltered photographs of the original manufacturer's certification label and the RI's certification label permanently affixed to the vehicle (and, if the vehicle is a motorcycle, a photograph or photocopy of the RI certification label before it has been affixed), (viii) documentation including photographs sufficient to demonstrate conformity, and (ix) the policy number of the service insurance policy furnished with the vehicle pursuant to Section 592.6(g). For clarity, we are also requiring the RI to include, as (x), a statement that clearly identifies the submission as the RI's initial certification for the make, model, and model year of the vehicle covered by the submission.

Under current Section 592.6(f), a RI's second and subsequent conformity packages for a given make, model, and model year motor vehicle need not contain all the information in its first submission but only "such information, if any, as the Administrator may request." We proposed new Section 592.6(d)(7) to clarify that the same information would be required for second and subsequent conformity packages for each model unless the RI stated that it had conformed the vehicle in the same manner as it stated in its initial submission for that model. The proposal stated that if the RI makes such a statement, it "need only provide photographs and other documentation of the modifications that it made to such a vehicle to achieve conformity." However, that was not what we intended. Obviously, we need to receive the identifying information in subparagraph (i) of Section 592.6(d)(6), as well as much of the other information required under paragraph (d)(6). Our intent was to ease the burden on RIs involving the submission of subsequent conformity packages by not requiring the RIs to repeat their detailed descriptions of what modifications were made. We have revised Section 592.6(d)(7) to clarify that second and subsequent submissions need not provide the detailed description of conformance modifications needed and performed, if the vehicle was conformed in the same manner as described in the initial submission.

Currently, we require RIs to submit a copy of the actual service insurance policy that applies to each vehicle with the conformity package for the vehicle. We have concluded that this is not necessary, as long as the RI submits the name of the insurer and the insurance policy number or other identifying information so that we have a record in case the owner of the vehicle needs to utilize the policy. We are adopting our proposal on this point.

We received only one comment related to this issue. The commenter supported our proposal to only require RIs to provide policy numbers rather than copies of the actual policies, but asked that NHTSA supply the policy numbers to insurers in the same fashion that it currently provides information on bond releases. We understand that it is the practice of some insurers to provide RIs with quantities of blank policies, and that RIs do not always inform the insurer of the vehicles its policies cover, hence the request that NHTSA provide policy numbers routinely to insurers. This request would add yet another burden to NHTSA's importation enforcement program. We believe that this is a commercial matter, one that

should be resolved between a RI and its policy provider.

Section 592.6 does not currently address a RI's obligations with respect to recalls pending at the time of importation on vehicles for which it is responsible under the statute. In recent years, we have required RIs to include a statement in each conformity package that there are no outstanding recalls applicable to the vehicle (*i.e.*, recalls for which the remedy had not been performed). However, we have found that some RIs were not actually checking to see if such a statement was true and that in some cases vehicles were being released to the public with unremedied noncompliances and safety defects. Because of the clear adverse impact that this practice has on safety, we proposed that each conformity package contain substantiation that the vehicle is not subject to any safety recall campaigns being conducted by its original manufacturer (or its U.S. subsidiary) in the United States that have not been completed. There were no comments on this proposal, and we are adopting it as proposed.

Although the revised regulation (specifically, Section 592.6(d)(5)) does not specify any particular document to substantiate that all defects and noncompliances have been remedied, the most convenient and straightforward substantiation would be a document issued by the original manufacturer or a franchised dealer of that manufacturer stating that there are no outstanding recalls that apply to the vehicle, identified with a reference to a specific VIN. If the manufacturer's or dealer's records indicated that there were one or more recall campaigns for which a remedy had not been performed, the RI will have to submit repair records demonstrating that the remedy work had been performed on or before the submission. In appropriate cases, a RI could submit a printout from NHTSA's website showing that there were no recalls applicable to the specific model and model year of a vehicle.

We are moving in the direction of allowing the electronic submission of certain conformance documentation. However, we need to assure ourselves that all photographic information is authentic. It was our concern that current technology might be sufficiently advanced that it would be easy to alter digital or digitized photographs. We have discovered irregularities by noticing such things as color inconsistencies in the photographs. Because colors can be easily manipulated in a digital image, the agency's ability to detect such anomalies could be compromised. However, we proposed only that photographs documenting conformity be "true and unaltered," a term that would not per se prohibit digital photographs and would encompass all types of photographs submitted. These photographs would be retained for all vehicles conformed by RIs, including but not limited to views of the vehicle speedometer/odometer displays and the RI's and original manufacturer's certification labels.

Two commenters supported allowing electronic submission of digital photographs. According to one, digital cameras exist that have a technology precluding manipulation of the image. The second commenter said that other Federal agencies, including the U.S. Customs Service (now the Bureau of Customs and Border Protection), have successfully used this technology without giving up program control. In view of these comments, and of the growing use of digital cameras since our year 2000 proposal, we have decided that we will accept digital photos as part of a certification of conformance package; however, these packages will not be allowed to be submitted electronically at this time. See discussion below of Section E.2, *Electronic Transmission*. The regulation will be amended as proposed, to require the submission of "true and unaltered photographs."

Section 592.6(e) currently requires a RI, after it has completed bringing a vehicle into conformity, to certify to NHTSA that the vehicle complies with all applicable FMVSS, "and that it is the person legally responsible for bringing the vehicle into conformity." In some recent instances, RIs have applied certification labels and submitted conformity packages to NHTSA without any knowledge of what modifications were needed, what in fact was done, or whether standards were met, and without exercising any control over the process. For example, certification to NHTSA has been provided by individuals who have never seen the vehicles and are hundreds of miles away from the RI's conformance facility, purportedly based upon having been granted a power of attorney from the RI responsible for the vehicle's importation. In another instance, we informed a RI that we would not accept certifications to us from appointed individuals resident in Canada.

In our view, certification to NHTSA is a duty that must be performed by someone who has personal knowledge of the relevant information. We therefore proposed, in new Section 592.6(d)(3), that the required certification to NHTSA could only be signed by a principal of the RI, who would attest to having personal knowledge that the RI had performed all work required to bring the vehicle into conformity with all applicable Federal motor vehicle safety, bumper, and theft prevention standards. As noted above, the identity of the principal(s) authorized to make this certification would be stated in the RI application or in subsequent filings with NHTSA pursuant to Section 592.6(m).

These provisions elicited opposition from several commenters. NAATA stated that principals should not be required to sign certifications because this practice is not commercially viable. The commenter asserted that in a majority of cases, employees prepare certifications and the principal does not have specific knowledge of all information behind the certification, "nor can NHTSA expect the principal to have knowledge." NAATA suggested that a stamp of the principal's signature or a signature of the employee in charge should be sufficient. Two commenters asserted that it is legal to delegate signature authority and that a properly authorized agent's signature is always binding on the principal. One further commented that signature stamps have long been accepted in commerce. A fourth commenter suggested that we allow signatures to be submitted electronically once a power of attorney is signed.

We have carefully considered these comments and rejected them. Most telling was NAATA's comment that we cannot "expect" the principal to have knowledge of information behind the certification. To the contrary, that is exactly what we do expect. One of the primary purposes of this rulemaking is to ensure that RIs conform the vehicle to the Federal motor vehicle safety standards and assure that recall remedies are performed by requiring one of their principals to be personally responsible for the accuracy of the conformance documentation and for the certification that the vehicle complies with applicable standards and that all outstanding recalls have been completed. We recognize that some RIs may have to change their procedures and personnel to comply with this requirement, but we have concluded that it is necessary to assure that the safety objectives of the statute are achieved.

In addition, we have concluded that the general language proposed in the NPRM could allow the submission of unclear or ambiguous certifications. To address this possibility, we have decided to require that the certification by the RI in the conformity package

must take one of the following two forms: (1) "I know that the vehicle that I am certifying conforms with all applicable Federal motor vehicle safety and bumper standards because I personally witnessed each modification performed on the vehicle to effect compliance," or (2) "I know that the vehicle I am certifying conforms with all applicable Federal motor vehicle safety and bumper standards because the persons who performed the necessary modifications to the vehicle are employees of [RI name] and have provided full documentation of the work that I have reviewed, and I am satisfied that the vehicle as modified complies" (see new Section 592.6(d)(1)). As proposed, the principal (a corporate officer, general partner, or sole proprietor) must sign the certification, a copy of which would have to be retained under Section 592.6(b)(5). Also, the certification must be personally signed and not bear a stamped signature or one applied by mechanical means. The submission to the Administrator must identify the facility where the conformance work was performed, and the location where the vehicle may be inspected should we need to inspect it before release of the conformance bond. Section 592.6(d)(4).

Finally, we want to add a word of caution. For many years we have not objected to RI certifications through the use of a form that contains a check list on which the RI indicates whether the vehicle was originally manufactured to conform to a specific Federal motor vehicle safety standard (by checking a column headed "O"), or modified by the RI to conform to the standard (by checking a column headed "M"), or that the standard is not applicable to the vehicle (by checking a column headed "N/A"). There have been times that RIs have inaccurately checked the box for a standard that does not apply to the vehicle, or indicated that the RI modified the vehicle when the vehicle, in fact, was originally manufactured to comply, or indicated that a standard did not apply when it did. If a RI indicates that a standard did not apply to a particular vehicle when in fact it did, we will regard the submission as incomplete and return it to the RI. We will also return submissions as incomplete where appropriate boxes are not checked or data not provided. If a submission is returned to a RI, we will charge the RI for the costs associated with the return. Return would not toll the 120-day period for submitting compliance information as provided under Section 592.6(a) (*i.e.*, the conformity package would have to be resubmitted within 120 days of importation). In that circumstance, we would not regard certification as having been provided to NHTSA within the meaning of 49 U.S.C. 30146(a)(1) if the submission is returned to a RI, and the 30-day period that a RI is required to retain custody of a vehicle will run from the day that a complete submission has been received by NHTSA.

Further, if a RI has certified to us that a vehicle has been modified with respect to a specific standard (*e.g.*, if the RI has checked the "M" box on the form for a particular standard) when it has not in fact modified the vehicle in that respect, we will consider that to be a knowingly false certification within the meaning of 49 U.S.C. 30115 and 30141(c)(4)(B), which authorizes us to establish procedures for automatic suspension of a RI registration, as related below in our discussion of Section 592.7(a). We believe that the possibility of automatic suspension should bring greater accountability to the certification process by encouraging RIs to complete their certification in a careful and thorough manner. It will also enhance motor vehicle safety by providing a greater incentive to RIs to make all necessary modifications to the vehicles they conform.

5. Section 592.6(e): What RIs Must Not Do Before NHTSA Releases the Conformance Bond

A RI may license or register an imported motor vehicle for use on public roads, or release custody of a motor vehicle to a person for license or registration for use on public roads "only after 30 days after the registered importer certifies [to NHTSA] that the motor vehicle complies [with applicable FMVSS]." 49 U.S.C. 30146(a)(1). We have construed this provision to allow a RI to license or register a vehicle, or release custody of a vehicle, for use on the public roads less than 30 days after receipt of the conformance package if we have notified the RI that the conformance bond required by 49 U.S.C. 30141(d) has been released.

We have tried to accommodate RIs by reducing data-submission requirements for vehicles certified to the Canadian standards, and by expediting the process by releasing the conformance bonds. (We intend to propose a new approach in the forthcoming NPRM that would further expedite bond releases. However, that new process is not yet in place). During 2002, we released conformance bonds within an average of five working days after they were received by OVSC. However, despite these short processing times, we have discovered that in some instances vehicles imported from Canada have been shipped directly to auction houses or dealers and sold very soon after entry, before bonds were released, and in some instances, even before we had received a certification of conformity from the RI.

The RI's duty to retain "custody" of the vehicles is a statutory requirement that had not been explicitly restated previously in Part 592 even though it is one of the conditions of the conformance bond required by Part 591 and Annex A of that Part. To emphasize this statutory requirement, we are restating it in Section 592.6.

Issues have arisen as to whether the retention of "custody" requires a RI to maintain physical possession of a vehicle at one of its own facilities, pending bond release. It has been our view that, at a minimum, we need to know the location of a vehicle to be able to inspect it during the period before we release the bond, and to have the same access to the vehicle as if it were stored at the RI's own facility. In addition, title to the vehicle must not have passed from the RI who imported the vehicle to any other person or entity before bond release so that we can be certain that a RI will be able to fulfill the bond condition to export or abandon the vehicle if NHTSA does not release the bond. See letters of April 17, 2000, from Frank Seales, Jr., to Philip Trupiano, and of April 19, 2000, from Kenneth N. Weinstein to John Dowd, *et al.*, which have been placed in the docket. In the NPRM, we proposed to codify those policies and interpretations.

The custody requirements that we proposed were supported by two commenters. These restrictions parallel those of the EPA with respect to emissions requirements established under the Clean Air Act to ensure that the Independent Commercial Importer (ICI) which has registered with EPA retains physical possession of a vehicle at its own facility pending bond release. Under EPA's regulation, during the period of "conditional admission" before EPA issues a certificate of conformity and a vehicle is released, the importer may not operate the vehicle on the public roads, sell or offer it for sale, or store it on the premises of a dealer. 40 CFR 85.1513(b).

One RI specifically opposed this proposal. The commenter claimed that the statute does not authorize NHTSA to prohibit vehicle operation on the public roads before release of the bond. We believe that the prohibition against on-road use of gray market vehicles during the period between importation and bond release is implicit in the statutory scheme. Gray market vehicles are

conditionally admitted into the United States, subject to being brought into compliance by the RI and to being certified as compliant by the RI. The statute provides NHTSA with a period of 30 days after receipt of the RI's certification to review the conformity package to assure that all required actions were taken by the RI. Until this procedure is completed and NHTSA has accepted a certification of compliance by releasing the bond, the vehicle cannot be considered compliant. Moreover, operation of a vehicle on the public roads is an introduction of that vehicle into interstate commerce, and introduction of a noncompliant vehicle into interstate commerce is a specific violation of 49 U.S.C. 30112(a).

The RI commenter noted that some limited operation of gray market vehicles on the public roads is necessary because RIs "must be able to take vehicles to a dealership for recall service before certification of compliance is made." Although a RI could use a tow truck in this circumstance, we are willing to allow limited use of the public roads for recall service, and we have adopted Section 592.6(e)(1) accordingly. Thus, under the final rule, if a RI imports a motor vehicle and sells it or offers it for sale at any time before the end of the 30-day hold period following submission of the conformity package or before the bond has been released, whichever first occurs, or stores it on a dealer's lot, or allows it to be operated on the public roads for a purpose other than transportation to and from a dealership for remedy of a noncompliance or safety-related defect, a violation will have taken place for which sanctions may be imposed.

In addition to the restrictions that parallel EPA's, we are also adopting language that tracks the statutory prohibitions in the Safety Act against premature licensing or registering of a motor vehicle for use on the public roads, or release of custody to any person for such purposes.

With respect to the titling of vehicles, we made the following remarks in the NPRM (p. 69280):

> In line with our past interpretations, we propose to continue to permit a RI to obtain title in its own name to the vehicles that it imports for resale, either before or after importation, but we shall not allow the RI to title it in the name of any other entity (such as a title clearer, dealer or a retail purchaser) until after we have released the bond. This is designed to ensure that the RI retains the ability to export or abandon the vehicle to the United States, upon demand by the United States, for its failure to conform the vehicle.

One comment was received agreeing that vehicles should not be allowed to be titled in the name of a person other than a RI before bond release. However, one commenter disagreed, arguing that NHTSA lacks the statutory authority to impose a titling restriction because the prohibition of Section 30146(a)(1) is against "'licensing" and "registration" only, and does not include the word "titling." We disagree with this contention. In many instances, titling is a prerequisite for registering a vehicle. In any event, prohibiting anyone from holding title other than the RI that imported the vehicle upholds the statutory purpose forbidding the registration of imported vehicles for use on the public roads before we review and accept the RI's conformance certification and release the bond. Moreover, as discussed above, it will assure that improperly certified vehicles can be re-exported or abandoned to the United States.

A further comment cautioned that NHTSA should not encourage States to use their titling authority to administer or enforce Federal regulations. Our restrictions apply solely to RIs, and we are not imposing mandates on the States. However, we recognize that States have interests under their vehicle laws and consumer protection laws in assuring that only compliant vehicles are operated on their roads, and we believe that it is appropriate for States to refuse to title vehicles in the absence of a bond release.

Although our preamble remarks on p. 69280, set forth above, spoke in terms of our existing practice, the NPRM did not propose specific language. After due consideration of the comments from the public on this issue, we have decided to formalize the interpretations by adding titling restrictions to the regulatory text of the final rule, specifically as an addition to Sections 592.6(e)(4) and (5) as actions not to be taken before release of the DOT bond. Thus, prior to bond release, a RI, with respect to a vehicle that it has imported, must not "(4) Title in a name other than its own, or license or register the motor vehicle for use on public streets, roads, or highways, or (5) Release custody of the motor vehicle to a person for sale, or license or registration for use on public streets, roads, or highways, or title the vehicle in a name other than its own."

6. Section 592.6(f): RIs Must Provide a Copy of the Service Insurance Policy With Each Vehicle

Under the current rules, an applicant must provide a copy of a contract to acquire, effective upon its registration as a RI, a prepaid mandatory service insurance policy underwritten by an independent insurance company, or a copy of such policy, in an amount that equals $2,000 for each motor vehicle for which the applicant will furnish a certificate of conformity to the Administrator. The purpose of the policy is to ensure that the applicant will be able financially to remedy any noncompliance or safety-related defect occurring in the vehicle.

In the NPRM, we proposed to require each RI to deliver such a policy with each vehicle it conforms. We also proposed that, on a monthly basis, each RI would have to provide to the insurance company issuing the policies the VINs of each vehicle covered by a policy. We did so in an effort to ensure that the purchasers of all gray market vehicles are aware of their ability to use this policy to have safety recall work done at no charge to them, and to ensure that the issuers of the policies are informed of the number and identity of the vehicles that their policies cover.

We had no comments on this proposed requirement, and are adopting it.

7. Section 592.6(g): RIs Must Provide and Retain Copies of Odometer Disclosure Statements

We proposed a new Section 592.6(h) to remind RIs of their obligation, which exists independently under 49 U.S.C. 32705 and 49 CFR Part 580, *Odometer Disclosure Requirements*, to provide an odometer mileage disclosure statement to the transferee of any vehicle that they transfer. Dealers and distributors, such as a RI that imports vehicles for resale, must also retain a copy for five years (49 CFR 580.8(a)). We want to reiterate these obligations in Part 592, so that a RI that focuses principally on 49 CFR Parts 591–594 does not miss this requirement. Also, a failure to comply with these requirements will be a violation of this Part.

We had one comment on this issue, which agreed with our proposal, and we are adopting it as proposed.

8. Section 592.6(h): RIs Must Remedy Noncompliances and Safety-Related Defects, and Provide Reports Regarding Certain Recalls

As discussed above, each RI is statutorily responsible for conducting recalls to address noncompliances and safety defects in the vehicles that it imports or conforms. 49 U.S.C. 30147(a)(1). Section 592.6(g) currently specifies certain RI responsibilities with respect to recalls, but it does not address some relevant issues that should be addressed.

As currently written, Section 592.6(g) is primarily directed toward recalls that are announced after a vehicle has been released by the RI and is already in the possession of an owner, and it does not address recalls that apply to imported vehicles at the time they are imported. To assure that there is no misunderstanding about the duties of a RI under the latter circumstances, we are amending Sections 592.6(b), (c), (d), as described earlier in this notice.

We also proposed amendments addressing a RI's responsibilities for recalls that are announced after the vehicle has been certified by the RI. These duties already exist by virtue of Section 30147(a)(1). However, some RIs have not attended to their obligations in this regard. To further emphasize these obligations, we are restating them in Part 592.

Current Section 592.6(g) requires a RI to provide notification and remedy "with respect to any motor vehicle for which it has furnished a certificate of conformity."

We understand that it is the practice of most major manufacturers who sell vehicles in the United States (with the exception of some Asian-based producers of Canadian vehicles) to include in their U.S. safety recall campaigns vehicles that were originally manufactured for sale in Canada that have been registered in the United States. In such cases, the owner of a vehicle modified by a RI normally will be notified of the defect or noncompliance by the original manufacturer. However, this may not always be the case, particularly with regard to recently-imported vehicles, since the State vehicle registration records used by the manufacturer may not be completely up-to-date at all times.

The statute requires a RI to assure that the owner of each vehicle it imports or conforms is provided with notification of all noncompliances and safety-related defects determined to exist in the vehicle and the opportunity to receive a free remedy. To allow us to ascertain whether a RI is satisfying those obligations, when a vehicle manufacturer determines that a noncompliance or safety-related defect exists in its vehicles and commences a notification and remedy campaign, we need to know whether the manufacturer will cover the manufacturer's vehicles that the RI has imported. If it does not, the RI must notify each current owner and provide an appropriate remedy at no charge. We therefore proposed that each RI inform us not later than 30 days after a vehicle manufacturer commences a notification campaign applicable to vehicles imported by the RI whether the manufacturer's recall will cover those vehicles. If not, the RI would be required to furnish us with a copy of the notification that it intends to send to the different vehicle owners in accordance with 49 CFR Part 577, to actually send such notifications, and to provide the appropriate remedy without charge.

Two commenters strongly supported the statutory provisions and our proposed implementation of RI notification and remedy responsibilities. One of these argued that the proposal did not go far enough, and that NHTSA should require RIs to substantiate to NHTSA that they are maintaining a current paid subscription to a manufacturer database such as Alldata or Mitchell. The comment further recommended that RIs be required to identify for NHTSA and vehicle owners an established time period and methodology for providing notification of future recalls, and how it will perform the remedy.

We do not believe that it is necessary to mandate any particular methodology to be used by RIs. In practice, while we are not obligated to do so, we have been notifying RIs (normally at the end of each calendar quarter, by fax) of safety recalls that may apply to the vehicles they imported (based on make, model, and model year). New Section 592.5(a)(9)(iv) requires an applicant for RI status to demonstrate that it is able to acquire and maintain information regarding the vehicles that it imported and/or for which it submitted certification to NHTSA, and the names and addresses of the owners of these vehicles in order to notify such owners of safety-related defects or noncompliances. This will allow RI applicants flexibility while assuring that they will be able to conduct required notifications.

The same commenter also argued that NHTSA should prohibit RIs from subcontracting their recall responsibilities unless the remedy is performed at an authorized dealership for the model of vehicle involved. We believe that this comment has merit, and have adopted this prohibition in the final rule. The 1988 Act directs us to impose "requirements that ensure that the importer * * * will be able technically * * * to carry out responsibilities under sections * * * 30118–30121 * * * of this title." These are the defect and noncompliance notification and remedy responsibilities. Once an applicant has established it is technically capable of remedying noncompliances and is registered as a RI, the RI should not subcontract this duty to anyone other than an authorized dealer or facility for the vehicle in question, since we have no basis to conclude that any other entities would be capable of making the necessary repairs under the recall. We have always prohibited RIs from subcontracting work needed to bring a vehicle into conformance; the work needed to remedy noncompliances and safety defects should be treated in a similar manner.

We proposed in Section 592.6(j)(2) that the RI must inform NHTSA whether the original manufacturer or the RI will provide notification and remedy for defects and noncompliances that have been found to exist in a vehicle as of the time of importation. One RI commenter objected, arguing that such a requirement would be unworkable because a RI is not in a position to know whether all the vehicles it has imported that are subject to a specific recall are to be included in the manufacturer's U.S. campaign. The commenter explained that some vehicles may be excluded from the original manufacturer's VIN database search, such as recently-imported vehicles and vehicles not yet titled and registered.

We have decided on a different, less burdensome approach, in the final rule. If a RI becomes aware (from whatever source) that the manufacturer of a vehicle it has imported will not remedy free of charge a defect or noncompliance that has been decided to exist in that vehicle, within 30 days thereafter, the RI must inform NHTSA and submit a copy of the notification letter that it intends to send to the owner of the vehicle(s) in question. We are adopting Section 592.6(i)(2) to reflect this approach.

Under Section 573.7 (formerly Section 573.6), manufacturers conducting recalls must provide six quarterly reports to us setting forth specified information regarding the recall. This information allows us to monitor the campaigns, and includes the number of vehicles or items of equipment covered by the campaign and the number of vehicles or equipment items remedied by the end of each calendar quarter. Because RIs have a statutory responsibility to notify and remedy, they, too, are subject to this reporting requirement. However, we have concluded that some of the provisions of Section 573.7 should not apply to them, and we proposed less stringent requirements.

For recalls that have been announced by a vehicle manufacturer before the RI submits its conformity package under Section 592.6(d), the RI must ensure the completion of appropriate recall repairs before it releases the vehicle. Therefore, there appears to be no need for the RI

to submit any reports pursuant to Section 573.7 with respect to those recalls. This is reflected in our new Section 592.6(i)(5). Nor do we need to receive reports from RIs with respect to recall campaigns being conducted by the original manufacturer on vehicles imported by the RI.

There may be some instances when a manufacturer conducts a recall of vehicles sold in the United States, but does not include the Canadian counterparts of the recalled vehicles. Recall implementation in this instance falls upon the RI, as it does in those rare cases in which a RI makes its own determination of a defect or noncompliance. In these instances we need to receive progress reports from RIs. While 49 CFR 573.7 requires vehicle manufacturers to submit six quarterly reports containing extensive, detailed information, we believe that fewer reports and significantly less information is needed from RIs. Although one commenter asserted that RIs "should be required to handle all recalls in the same manner as OEMs, we shall require only two reports for each post-importation recall campaign, which will also serve to ease the paperwork burden on small businesses. (We note that RIs might need to simultaneously conduct campaigns on the products of a number of vehicle manufacturers rather than focusing on a single manufacturer's product at one time.) There were no comments specifically addressing our proposals regarding the timing and content of these reports. Therefore, we are adopting Section 592.6(i)(5) (Section 592.6(j)(5) in the NPRM) as proposed.

Finally, we have reviewed current Section 592.6(g)(2)(i) relating to the period for which a RI must provide a remedy without charge, and have restated it in Section 592.6(i)(6) in a much simpler fashion. By doing so, we are heeding E.O. 12866 and its goal that rules be written in plain language. As noted in our discussion under Section 592.6(b), the TREAD Act has increased the period of free remedy from 8 to 10 years. This increase, effective as of the date of enactment of the TREAD Act, is reflected in conforming amendments to our general recordkeeping regulation, 49 CFR Part 576.

9. Section 592.6(l): RIs Must Notify NHTSA of Any Change of Information Contained in the Registration Application, and Must Notify NHTSA Before Adding or Discontinuing the Use of Any Facility

At present, Section 592.5(f) requires a RI to notify us not later than 30 days after a change in any of the information submitted in its registration application. We proposed to maintain this requirement as a duty with two additions.

We have concluded that, where the change involves the use of a facility (*e.g.*, for modifications, repair, or storage) not designated in the registration application, a RI must notify us of its intent to use such facility not less than 30 days before such change takes place, and provide us with the same information regarding the facility that is required in the original RI application, including still or video photographs of the facility. This will allow us to evaluate the adequacy of the new facility for the services to be performed there. We will also require a RI to notify us at least 10 days before it discontinues the use of any identified facility, and to identify the facility, if any, that will be used in its stead.

We had one comment on this aspect of the NPRM, which supported it, and therefore we are adopting it as proposed.

10. Section 592.6(m): RIs Must Assure That at Least One Full-Time Employee of the RI Is Present at One or More of the Facilities It Identified in Its Application

Where a RI has several separate facilities, we are concerned about the RI's ability to supervise conformance and recall work, to maintain records regarding the vehicles it has imported, and our ability to inspect the vehicles, operation, and records. To address these concerns, we proposed to adopt a new Section 592.6(n) to require each RI to assure that at least one full-time employee of the RI is present at each of its facilities. This is consistent with our statement in the preamble to the final rule establishing Part 592 that a RI may not utilize agents to fulfill its statutory responsibilities, and that "conformance operations must be carried out by Registered Importers [and] their employees." 54 FR 40083, at 40086.

Our proposal on this point was supported by two commenters. NAATA opposed it, on the grounds that the volume of imports by a RI may not support the need for a full-time employee. The commenter contended that if NHTSA requires this, the RI should be able to maintain a facility with no employee on condition that no vehicles are stored at the facility. The facility we are primarily concerned with is the facility where the RI's conformance work is performed. However, we realize that there may be times when the volume of imports is such that the conformance facility is not in use. Nevertheless, we believe that a RI should be accessible to NHTSA during normal business hours, and this can be best assured by requiring a RI to have at least one full-time employee present at one or more of the facilities in the United States it has designated in its application. The term "employee" includes any officer of a corporation and partner of a partnership. Accordingly, we are modifying our proposal and adopting this requirement.

11. Section 592.6(n): RIs Must Not Co-Utilize the Same Employee or the Same Conformance or Repair Facility

Questions have been raised whether two or more RIs may use common employees or a shared facility to perform conformance modifications or recall repairs, or to store imported vehicles. As indicated above, we do not allow a RI to make arrangements with other persons, including its customers (*e.g.*, used car dealers) or other RIs, under which the other entity would perform the RI's duties. We had tentatively concluded that to allow two or more RIs to use the same employee, or a common facility for repairs, conformance work, or storage, raised the possibility of ineffective management and controls, particularly when the main office of a RI is some distance away from the facility in question. It could also raise questions of accountability for any problems that might arise. We also noted that if more than one RI shared a storage facility, it would be difficult for us to identify bonded vehicles for which an individual RI may be responsible when we are conducting inspections. We therefore proposed to prohibit a RI from co-utilizing any employee, or any conformance, repair, or storage facility, with another RI.

The proposal was supported by two commenters, and opposed by one on the basis that co-utilization of facilities does not compromise a RI's ability to perform conformance work. However, this comment did not address our concerns regarding accountability, management and controls. We are concerned that, if two RIs utilize common facilities and personnel, one RI may blame the other RI for any of its own failures to comply with statutory or regulatory requirements (*e.g.*, vehicles sold before bond release, vehicles not modified in a timely manner because the mechanic is busy modifying the vehicles imported by the other RI, and affixing labels of one RI on the vehicles of the other). Accordingly, the final rule is adopted substantially as proposed. However, we have decided to allow co-utilization of storage facilities, since such co-utilization of those facilities is less

likely to create the sorts of problems that concern us.

As we noted in the preamble to the NPRM, if a RI stores bonded vehicles on premises other than its own, the storage area should be clearly delineated and the vehicles being stored not mingled with vehicles for which the RI is not responsible. We are now adding this as a regulatory requirement in Section 592.6(n), and it will also be applicable to storage facilities that a RI co-utilizes with one or more RIs.

12. Section 592.6(o): RIs Must Provide Timely Responses to NHTSA Requests for Information

Under 49 U.S.C. 30166(e), we reasonably may require a manufacturer to make reports to enable us to decide whether it is complying with any of our requirements. Our requests for information invariably identify the date by which we expect a response. As noted above, a RI is a statutory manufacturer because it imports motor vehicles for resale. We had tentatively decided that a regulation reiterating the requirement to make timely reports under Section 30166(e) would heighten our ability to obtain information, and would provide a basis for suspension or revocation of a registration if the information were not forthcoming in a timely manner. There was no comment on this aspect of our proposal, and we are adopting it in the final rule.

13. Section 592.6(p): RIs Must Pay Fees When They Are Due

We proposed a new section adding a specific duty for a RI to pay all applicable fees in a timely manner. Although a registration may be suspended under Section 592.7(a) upon a RI's failure to pay fees when they are due and payable, we wished to emphasize that it is an affirmative duty for a RI to pay fees and to pay them when they are due. There was no comment on this aspect of our proposal, and we are adopting it in the final rule.

14. Section 592.6(q): Current RIs Must Provide Information That Will be Required of New RI Applicants

As described above, we are adopting comprehensive revisions to Section 592.5 with respect to the information required in RI applications. By their own terms, these new requirements will apply to applications pending as of the effective date of the final rule. However, we believe that, to assure proper qualifications and operations, entities that are RIs at the time the final rule becomes effective must furnish the equivalent information, even though that information was not required at the time they submitted their original applications. In order to ensure that this information is provided by those whose applications have been granted previously (*i.e.*, those who are already RIs at the time of the final rule), we proposed that RIs, not later than 30 days after the effective date of the amendments to Section 592.5(a), should provide all the information that the revised regulation will require. This additional information would include the RI's designation of an agent for service of process if it is not organized under the law of any State of the United States. A RI could incorporate by reference any item of information previously provided to the Administrator in its application, annual statement, or notification of change by a clear reference to the date, page, and entry in the existing document. Failure to provide this information not later than the effective date of the amendments would be grounds for suspension.

The sole commenter on this aspect of the proposal believed that NHTSA should suspend a registration immediately if a RI failed to provide information in accordance with the new regulation. We address the topic of automatic suspension immediately below and are adopting this provision as proposed.

C. Automatic Suspension, Revocation, and Suspension of Registrations; Reinstatement of RI Registrations (Section 592.7)

1. Section 592.7(a): Automatic Suspension of the Registration of a RI

49 U.S.C. 30141(c)(4)(A) authorizes NHTSA to suspend a registration if a RI fails to comply with specified statutory requirements as well as "regulations prescribed under this subchapter," *i.e.*, 49 U.S.C. Sections 30141–47. Two of the circumstances warranting suspension are of a serious enough nature that Section 30141(c)(4)(B) requires the suspension to be "automatic:" when a registered importer does not, in a timely manner, pay a fee required by 49 CFR Part 594 and when a RI knowingly files a false or misleading certification under 49 U.S.C. 30146. Our present regulation covers this in 49 CFR 592.7(a) and (b).

Currently, Section 592.7(a) provides that a registration will automatically be suspended if we have not received a fee by the beginning of the 31st day after it is due and payable. To date, on several occasions we have automatically suspended registrations for failure to timely pay the annual fee that the RI must pay pursuant to Section 594.6. In addition, 49 U.S.C. 30141(a)(3) also authorizes the imposition of fees "to pay for the costs of—(A) processing bonds provided * * * under subsection (d) of this section; and (B) making the decisions under this subchapter."

Under this provision, we have established fees for the filing of a petition for a determination whether a vehicle is eligible for importation (Section 594.7); for importing a vehicle covered by an eligibility determination by NHTSA (Section 594.8); for reimbursement of bond processing costs (Section 594.9); and for review and processing of a conformity certificate (Section 594.10).

Under current Section 594.5(e), (f), and (g), the fees for importing a vehicle covered by a NHTSA eligibility determination, for bond processing costs, and for the NHTSA review and processing of a conformity certificate are to be submitted with the certificate of conformity. However, we have allowed RIs to delay payment until 30 days after we issue a monthly invoice indicating the amount due. In practice, about 80 percent of the payments are made less than two weeks after the invoice, and most payments are transmitted electronically or made by credit card. We proposed to formalize the actual payment practice by establishing a due date of 15 days from the date of the invoice by deleting subsections (e), (f), and (g) and adding a new Section 594.5(f). No one commented on the due date aspect of the proposal and we are adopting it in the final rule.

We intend to suspend automatically a RI's registration if any of the required fees are not received by their due dates. As we proposed in Section 592.7(a)(1), if a RI has not paid its annual fee by October 10 or paid its other fees within 15 calendar days of NHTSA's invoice, on the next business day we would inform Customs that the RI's registration had been suspended until further notice, and that the RI may not import any additional motor vehicles. We intend to apply this policy as of September 30, 2004 to fees that are overdue as of that date under the old rule.

Two commenters supported automatic suspension for non-payment of fees. A RI commenter cautioned us to be sure before acting that NHTSA had not made a recording mistake, and recommended that the agency contact the RI to determine whether a mistake has been made before it notifies Customs that a registration has been suspended. This does not place the burden where it belongs. As noted above, a RI receives an invoice each month. If the RI fails to receive an invoice, it should contact NHTSA. We

often call the RI if we do not receive payment but are not assuming a duty to do so. However, when a charge on a credit card is repeatedly rejected, following up becomes time-consuming and wasteful. As a matter of enforcement discretion, we intend to notify a RI by telephone, contemporaneously confirmed in writing, upon the initial rejection of a credit charge. If the charge is not honored a second time, we shall automatically suspend the registration. We will not provide this notification for repeat offenders.

If a fee is paid after a registration is suspended, following receipt and clearance of the payment, we will reinstate the registration and inform Customs of this action. One commenter suggested that we should notify Customs of the reinstatement on the next business day. We will normally attempt to do so, but cannot assure that we will do so, as we cannot predict the press of business on any given day.

To further encourage timely payment and to partially cover our administrative costs of processing such a suspension and reinstatement, we proposed to require the RI to also pay an amount equal to ten percent of the overdue amount as a condition for having the registration reinstated. We are adopting this proposal in the absence of any comments to the contrary.

Congress also directed us to establish procedures for automatically suspending a registration of a RI that has knowingly filed a false or misleading certification. 49 U.S.C. 30141(c)(4)(B). We proposed rules to implement this provision. Two commenters supported our proposal. Auto Enterprises suggested that such a suspension should only occur if we found that the RI "knowingly and deliberately attempted to deceive NHTSA on a material issue that could be reasonably viewed as having the potential of endangering motor vehicle safety." However, this would limit the statutory provision, which refers only to knowingly filing a false or misleading certification. The limiting elements of "material issue" and "potential of endangering motor vehicle safety" are not specified by the statute. A RI is presumed to know the truth or falsity of what its principal has signed.

Under proposed Section 592.7(a)(2), which we are adopting in the final rule as proposed, if we decide that a RI has knowingly filed a false or misleading certification, we would automatically suspend the RI's registration, effective immediately, notifying the RI by letter of the decision, the length of the suspension, if applicable, and the facts upon which our decision was based. We will afford the RI, within 30 days of the notification, an opportunity to challenge the decision by presenting data, views, and arguments in writing or in person.

We could also suspend a registration non-automatically for these violations under Section 30141(c)(4)(A), and Section 592.7(b) (discussed below). For example, in a factually complex case involving what appears to be a filing of a false and misleading certification under Section 30146, we might provide an opportunity to be heard before issuing a suspension.

The NPRM also identified three further situations that we believe warrant automatic suspension. The first concerned the failure to maintain a current telephone number and a street address where mail is received. It is imperative that we be able to reach each RI to obtain information or to conduct an inspection. As specified in new Section 592.5(a)(5)(i), each RI must include telephone numbers and a street address in the United States with its application. Under current Section 592.5(f), a regulation prescribed under Section 30141(c)(1), a RI is to notify us in writing within 30 days after any change of street address or phone number. As noted above, under new Section 592.6(m), a RI will be required to notify us at least 30 days in advance of its change of street address and/or telephone number.

There have been instances in which mail addressed to a RI has been returned as "undeliverable." When this occurs, and the RI cannot readily be contacted by us, the agency has lost its ability to communicate with the RI even though the RI may still be importing motor vehicles. To address this situation, we proposed in Section 592.7(a)(3) to automatically suspend a registration, and request Customs not to allow vehicles to be imported into the U.S. by a RI, if our letters to the RI are returned to us as undeliverable at the street address it has provided to us or if the telephone number provided to us is disconnected. There were no comments on this aspect of the proposed rule, and we are adopting it.

The second situation involves compliance with the new provision (in Section 592.6(f)) that requires each entity that is a RI at the time that the final rule takes effect to provide us with information equivalent to that which will be required of new RI applicants, not later than 30 days after the effective date. If a RI fails to provide this information, we shall automatically suspend its registration (Section 592.7(a)(4)). We had one comment on this aspect of the proposal, expressing support for "immediate suspension," which we believe means automatic suspension.

Third, we have become aware of several instances in which a RI released vehicles using forged or otherwise falsified documents purporting to be agency bond release letters. In addition to other sanctions such as fines and penalties, we believe that the registration of a RI that is releasing vehicles on the basis of such falsified bond release letters should be suspended automatically. We had no comments on this aspect of the proposal, and we are adopting it. Moreover, it is likely that during such a suspension we would commence a proceeding to revoke the RI's registration, in accordance with the procedures discussed below that we are adopting in Section 592.7(b).

We asked for comments as to whether other violations of Section 30141(c)(4) might warrant automatic suspension, such as failure to admit a NHTSA inspector to the premises, or to make records available for inspection. There were no comments, and we have decided not to include these failures of a RI as grounds for automatic suspension. Of course, we could take other enforcement action with respect to such violations.

There were no comments specifically addressing the procedural steps we proposed that would lead to automatic suspension of an RI registration, and we are adopting them as proposed. One RI commenter stated in very general terms that any automatic suspension before a hearing must take into account due process, and that RIs have a basic right to a fair hearing to ensure the right to be heard before adverse action is taken by the agency. We reviewed the issue of conformance with the Fifth Amendment (due process) and the Administrative Procedure Act before issuing the proposal, and we concluded that the procedures we proposed are consistent with applicable law. We did not receive any specific comments to the contrary. The effect of an automatic suspension is that a RI may not continue to import vehicles after it has been notified of the suspension. Section 592.7(c), discussed more fully below, specifies the conditions under which a suspended registration may be reinstated. Section 592.7(a)(7) provides an opportunity for a RI to seek reconsideration of an automatic suspension.

2. Section 592.7(b): Non-Automatic Suspension and Revocation of RI Registrations

49 U.S.C. 30141(c)(4)(A) requires us to establish procedures for revoking or

suspending a registration for not complying with a requirement of 49 U.S.C. 30141–30147, or any of sections 30112, 30115, 30117–30122, 30125(c), 30127, or 30166, or regulations prescribed under any of those sections. We intended to implement 49 U.S.C. 30141(c)(4)(A) by regulation, but had not completely done so by the time we issued the NPRM.

The statute authorizes us to consider revocation or suspension of a RI's registration for a broad range of violations, namely for any failure to comply with any aspect of the Imported Vehicle Safety Act of 1988 or its implementing regulations, 49 CFR Parts 591–594, as well as other general requirements of Chapter 301 relating to general prohibitions, certifications of compliance, notification relating to defects and noncompliances with FMVSS, recalls, testing of school buses, automatic crash protection and seat belts, inspections, and recordkeeping. 49 U.S.C. Section 30141(c)(4)(A). We proposed in Section 592.7(b) to reflect the statutory language of 49 U.S.C. 30141(c)(4)(A) and to clarify and broaden the circumstances under which a registration may be suspended or revoked. This would include any failure to perform any duty prescribed by Section 592.6. (As described above, additional duties are now specified in Section 592.6.) One of these duties is to provide information that will be required of new RI applicants (Section 592.6(r)). Thus, for example, if a RI failed to provide a copy of its business license or other similar document issued by an appropriate State or local authority authorizing it to do business as an importer, modifier, or seller of motor vehicles, which new Section 592.5(a)(5)(iii) requires to be submitted by applicants, grounds would exist for suspension of the RI's registration. There were no comments on this aspect of the proposal, and we are adopting it as proposed.

Before issuing the NPRM, we reviewed the suspension and revocation procedures currently specified in Section 592.7(b) and (c). Under these procedures, if the Administrator has reason to believe that a RI has failed to comply with a requirement and that a RI's registration should be suspended or revoked, (s)he notifies the RI in writing, affording an opportunity to present data, views, and arguments, either in writing or in person, as to why the registration should not be revoked or suspended. The Administrator then decides the appropriate action under the circumstances. If a registration is suspended or revoked, the RI may request reconsideration of the decision "if the request is supported by factual matter which was not available to the Administrator at the time the registration was suspended or revoked" (current Section 592.7(d)).

We proposed a revised procedure for non-automatic suspension and revocation of registrations, which, in the absence of comments, we are adopting. Under the revised procedure, the Administrator will notify the RI if there is reason to believe that the RI had violated one or more statutes or regulations, and that suspension for a proposed period or revocation would be an appropriate sanction under the circumstances. The proceedings will then essentially follow those set out in Sections 592.7(a), (b), and (c) of the current regulation, affording the RI, within 30 days of the Administrator's notification, an opportunity to present data, views, and arguments in writing or in person as to whether the violations occurred, why the registration ought not to be suspended or revoked, or whether the suspension should be shorter than proposed. The Administrator will make a decision on the basis of all information then available and notify the RI in writing of the decision. Because the RI will already have been afforded an opportunity to present data, views, and arguments relating to the proposed suspension, we will not provide an opportunity to seek administrative reconsideration of a decision to suspend or revoke a registration under this subsection.

3. Section 592.7(c): When and How NHTSA Will Reinstate Suspended RI Registrations

Current Section 592.7(f) specifies that the Administrator shall reinstate a suspended registration if the cause that led to the suspension no longer exists, as determined by the Administrator, either upon the Administrator's motion, or upon the submission of further information or fees by the RI. The NPRM expressed our belief that the provisions governing reinstatement of registrations need to be clarified and expanded to reflect the changes we are adopting in our suspension procedures.

Under the amended final rule, there are four specific bases upon which a registration can be automatically suspended (Section 592.7(a)). A registration may also be suspended non-automatically for failure to comply with statutory or regulatory authorities after notification from the Administrator (Section 592.7(b)). Amended Section 592.7(c)(1)–(4) specifies the conditions under which the registrations could be reinstated under each of the four bases for automatic suspension. Amended Section 592.7(c)(5) specifies that a registration that is suspended non-automatically shall be reinstated at the expiration of the period of suspension specified by the Administrator or such earlier date as the Administrator may decide is appropriate.

In the absence of any comments on the proposed conditions of reinstatement, we are adopting them as proposed.

The one comment on this aspect of the proposal suggested that NHTSA should be required to notify the U.S. Customs Service (now the Bureau of Customs and Border Protection) by the next business day when a suspended registration has been reinstated. As explained above, it has been our practice to notify Customs promptly when a RI is reinstated, but we cannot assure that the notification will occur on the next business day. We are adding specific language to this effect in new Section 592.7(c)(6).

4. Section 592.7(d): Effects on a RI of Suspension or Revocation of its Registration

During the period that a registration is suspended or if a registration is revoked, the entity will not be considered an active RI, will not have the rights and authorities appertaining thereto, and will not be allowed to import vehicles. We will promptly notify Customs of our action. If a RI imports vehicles on or after the suspension date, its suspension will be extended by one day for each day that it has imported vehicles while its registration is suspended, and other enforcement action may also be taken depending on the circumstances.

Under current Section 592.7(e), if a registration is revoked, the RI is not refunded any annual or other fees it has paid for the fiscal year in which its registration is revoked. This practice will be retained in new Section 592.7(d). In addition, in accordance with 49 U.S.C. 30141(c)(2), the section will specify that a RI whose registration has been revoked may not apply for reregistration. The prohibition will also apply if any of the principals of the applicant had been, or is affiliated with, a principal of a RI whose registration has been revoked.

We received no comments on this aspect of the proposed rule and are adopting our proposal.

Although a suspended or revoked RI will be foreclosed from importing vehicles, there may well be vehicles in its custody that are still under bond. New Section 592.7(d)(2) (proposed as Section 597(e)(2)) and (d)(3) cover these vehicles. With respect to those vehicles that the RI has certified and for which

it has submitted conformity packages to NHTSA at the time of a suspension or revocation, NHTSA will review and act upon the submissions as if the suspension or revocation had not occurred, and the RI may release the vehicles from custody when NHTSA releases the bonds, even if its suspension is in effect or its registration has been revoked. With respect to those vehicles for which certification or information submissions have not been submitted at the time a registration has been suspended, the RI must perform conformance work, and submit certification conformity packages to NHTSA within the 120-day submittal period.

When a registration has been revoked, or suspended for more than the first time, the RI will be required to export all vehicles which it imported for which it has not yet submitted conformity packages to NHTSA at the time of the suspension or revocation.

With respect to those vehicles imported for personal use by other persons under Section 591.5(f)(2)(ii) that a RI has contracted to conform and for which it has not yet submitted certifications, a suspended or revoked RI will be required to notify immediately the owners of the vehicles of NHTSA's action. We are adopting a conforming amendment to Part 591 under which the notified owner will be able to contract with another RI in order to have the vehicle certified and released. The applicable 120-day period for submission of certification information will be tolled during the period from the date of the RI's notice to the importer until the date of the contract with the substitute RI.

5. Section 592.7(e): Continuing Obligations of a RI Whose Registration Has Been Revoked or Suspended

We are removing existing Section 591.7(e), which has expired (Section 591.7(e) provided for applications to the Administrator, on or before February 14, 2000, to change the status of vehicles imported pursuant to Section 591.5(j)).

New Section 592.7(e)(1) clarifies that a RI whose registration is suspended or revoked remains obligated under Section 592.6(j) to notify owners of, and to remedy, noncompliances or safety-related defects for each vehicle for which it has furnished a certificate of conformity to the Administrator.

There were no comments on this aspect of the NPRM, which is being adopted as proposed.

D. Amendments to Part 591 to Preclude the Importation by a RI of a Salvage or Reconstructed Motor Vehicle; Minor Conforming Amendments to Part 591; Section 592.9: Forfeiture of Bond

Within the past several years, some RIs have sought to import heavily damaged motor vehicles both before and after their repair. In addition, some motor vehicles have been imported consisting of the body of one vehicle and the chassis and frame of another. Although we may have determined under Part 593 that the original vehicles, as manufactured, are capable of being modified to meet the FMVSS, we were not considering damaged vehicles. When a vehicle has been heavily damaged or reconstructed, we have no assurance that it can be restored to a condition in which it complies, or can be brought into compliance with, the Federal motor vehicle safety standards. The NPRM represented our tentative decision that the safety of the American public would be served by prohibiting importation of salvage, repaired salvage, or reconstructed vehicles into this country. Accordingly, we proposed amending Part 591 to require a RI to declare that each motor vehicle it is importing is not a salvage motor vehicle, a repaired salvage motor vehicle, or a reconstructed motor vehicle. We proposed the following definitions for these terms:

> Reconstructed motor vehicle means a motor vehicle whose body is less than 25 years old and which is mounted on a chassis or frame that is not its original chassis or frame and that is less than 25 years old.
>
> Repaired salvage vehicle means a salvage motor vehicle that has been repaired to the extent that any State will issue it a title and register it for use on the public streets, roads, or highways.
>
> Salvage motor vehicle means a motor vehicle less than 25 years old that has been wrecked, damaged, or destroyed to the extent that to repair it to the extent that any State would issue a title and register it for use on the public streets, roads or highways would require replacement of two or more of the following subassemblies: Front clip assembly (fenders, grille, hood, and bumper), rear clip assembly (rear quarter panels and floor panel assembly), side assembly (fenders, door(s) and quarter panel), engine and transmission, top assembly (except for convertible tops), or frame.

We received five comments on this aspect of our proposal. One commenter argued that salvage vehicles should still be eligible for import as parts. The commenter opposed a ban on reconstructed motor vehicles because in its view the definitions of this category of vehicle are not clear and vary among jurisdictions. The commenter asserted that reconstructed motor vehicles can be repaired to be as safe as other vehicles. A second commenter supported a ban on vehicles that have been totaled or severely damaged. It recommended that NHTSA use the definitions that were approved by the Senate Committee on Commerce, Science and Transportation in its consideration, in July 1999, of legislation (not enacted) to establish nationally uniform and workable definitions of those terms.

A third commenter argued that the proposed salvage definition is seldom followed in the U.S. or Canada. It recommended "accepting the determination of vehicle status * * * made by the jurisdiction where the vehicle was registered at the time of the damage." A fourth commenter suggested definitions for salvage vehicle, non-repairable vehicle, and flood vehicle.

We based our proposed definition of "salvage motor vehicle" in large part upon that of the State of Georgia. Our definition of "reconstructed motor vehicle" would be predicated on the fact that, pursuant to 49 U.S.C. 30112(b)(9), motor vehicles that are at least 25 years old may be imported without the need to meet the Federal motor vehicle safety standards, and therefore are not imported under the RI program.

Under the legislative proposal mentioned by the second commenter, a "rebuilt salvage vehicle" would be defined as "a passenger motor vehicle which was previously issued a salvage title, has passed a State anti-theft inspection, and has been issued a certificate stating so." The term "nonrepairable vehicle" would be defined as "any passenger motor vehicle which is incapable of safe operation on the roads and highways and which has no resale value except as a source of parts or scrap, or which the owner irreversibly designates as a source of parts or scrap." A "flood vehicle" would be "a motor vehicle that is acquired by an insurance company as part of a damage settlement due to water damage, or a vehicle that has been submerged in water such that water has reached over the door sill, entered the passenger or trunk compartment, has exposed any electrical, computerized, or mechanical component to water."

Another commenter agreed with the definitions submitted by the previous commenter for "nonrepairable vehicle" and for "flood vehicle." It submitted its own definition for "salvage vehicle':

> A salvage vehicle is a motor vehicle, other than a flood or non-repairable vehicle which has been
>
> (A) wrecked, destroyed, or damaged, to the extent that the total cost of repairs to rebuild or reconstruct it to its prior condition, and for

legal operation on the roads or highways, exceeds 75 percent of its value at the time it was wrecked, destroyed, or damaged;

(B) Wrecked, destroyed, or damaged, to which an insurance company acquires ownership pursuant to a damage settlement; or

(C) Voluntarily designated as such, without regard to its level of damage, age, or value, by an owner who obtains a salvage title.

We have carefully considered this suggested definition in light of the fact that no commenter specifically supported the definition we proposed, and have concluded that, with minor changes, it should be adopted. Thus, under the final rule:

Salvage motor vehicle means a motor vehicle, whether or not repaired, which has been (1) wrecked, destroyed, or damaged, to the extent that the total estimated or actual cost of parts and labor to rebuild or reconstruct the motor vehicle to its pre-accident condition and for legal operation on the streets, roads, or highways, exceeds 75 percent of its retail value at the time it was wrecked, destroyed, or damaged; or (2) wrecked, destroyed, or damaged, to which an insurance company acquires ownership pursuant to a damage settlement; (other than a damage settlement in connection with a recovered theft vehicle unless such motor vehicle sustained sufficient damage to meet the 75 percent threshold specified in the first sentence), or (3) voluntarily designated as such by its owner, without regard to the extent of the motor vehicle's damage and repairs.

With the inclusion of the phrase, "whether or not repaired," we remove the need for a definition of "repaired salvage vehicle." We are adopting our proposed definition of "reconstructed vehicle" because of the questions that arise as to the reasons for the reconstruction, the quality of the reconstruction, and the extent to which the original safety features of both vehicles have been retained or compromised. Above all, it seems highly unlikely that a reconstructed vehicle could be modified to comply with the Federal motor vehicle safety standards.

Section 591.8(c) requires that "the surety on a bond shall possess a certificate of authority to underwrite Federal bonds. (See list of certificated sureties at 54 FR 27800, June 30, 1989)." When published late in 1989, this list was intended to be a reference to current sureties, rather than a list of specific sureties incorporated by reference. The list is a document that changes as sureties are added to and dropped from the list, and we are dropping the reference to it. The requirement will remain that, at the time the bond is given, the surety possesses a certificate of authority to underwrite Federal bonds.

To ensure that the conditions under which the conformance bond may be forfeited are clearly understood, we proposed to adopt a new Section 592.9 that clearly describes the forfeiture conditions. There were no comments on this aspect of the proposal, and we are adopting it as proposed.

We are also making a minor amendment to Section 591.8(d)(3) to conform it to the associated Condition 3 in each of the Conformance Bonds contained in Appendix A and Appendix B to Part 591. Section 591.8(d)(3) is structured as a prohibition (release of a vehicle from custody within 30 days after certification to the Administrator) that no longer applies if a condition is met (bond release) to which there is an exception (two conditions under which the vehicle will not be released). The amendment clarifies that if one or both of the latter conditions occur, the vehicle shall not be released until after the appropriate condition is met even though more than 30 days may have passed after the Registered Importer has provided certification to the Administrator.

E. Other Comments to the NPRM

1. *New Classification of Importers.* NAATA observed that many RIs do not comply with the existing rules because of costs and competitive influences. This commenter predicted that these practices would continue even if the proposed rules were adopted. To address this shortcoming, the commenter recommended that there should be a third class of RI, identified as "Certification Bureaus." These bureaus "would accept the entire liability and responsibility for complete vehicle certification and compliance and for subsequent recall notification." The "Certification Bureau" would be the only entity allowed to be a subcontractee of a RI. We interpret this comment as indicating NAATA's view that a Certification Bureau would be free of competitive pressures because it would not be importing vehicles.

An entity not importing, or not intending to import, vehicles would not be eligible to become a RI under the statute. Further, as we have said before, we do not read the statute as countenancing the delegation of duties of an RI. The RI alone must be totally responsible for fulfilling its statutory obligations. Therefore, we are not implementing NAATA's suggestions. Moreover, we would not have statutory authority to regulate the activities of a "certification bureau" because such an entity would not qualify as a RI or be engaged in importation activities that are subject to the Safety Act. The Safety Act imposes certification responsibilities, and other duties and responsibilities on manufacturers and importers for resale (who are defined as "manufacturers" under 49 U.S.C. 30102(a)(5)(B)), and does not authorize their delegation to other persons.

2. *Electronic Transmissions.* Four commenters encouraged NHTSA to permit the electronic submissions of compliance data to lighten its workload, reduce expenses for all parties involved, and expedite the release of conformance bonds. We agree that this is a worthy goal, and it is a critical part of the revised system that we will propose in the subsequent NPRM. However, to spare the disruption to our work process that would be necessary to accommodate such a change, we are not adopting it at this time.

3. *Availability of FMVSS.* One commenter recommended that NHTSA supply RIs with hard copies of the FMVSS and regulations, or identify the source from which that information may be obtained. Hard copies of the regulations are too costly to permit us to distribute them free of charge. OVSC routinely identifies how the regulations may be ordered in the information it supplies to those who may wish to apply to become a RI, and in its occasional guidance to RIs advising of changes in the regulations. The full text of specific regulations may also be downloaded from the Electronic Code of Federal Regulations (e-CFR)" Web site at *http://www.gpoaccess.gov/ecfr.*

4. *CAFE.* Three comments were received expressing the opinion that RIs should comply with Corporate Average Fuel Economy (CAFE) Standards. We agree that CAFE requirements apply to RIs. By letter dated June 15, 1999, which we have placed in the docket for this rulemaking, we asked the Environmental Protection Agency (EPA) to work with us in developing an appropriate approach to this issue. We have had several subsequent discussions with EPA concerning this matter. However, we have not yet resolved all the many difficult issues that need to be addressed before CAFE requirements can be applied to RIs.

IV. Rulemaking Analyses and Notices

A. Executive Order 12866 (Federal Regulation) and DOT Regulatory Policies and Procedures

This notice has not been reviewed under E.O. 12866. After considering the impacts of this rulemaking action, we have determined that the action is not significant within the meaning of the Department of Transportation regulatory policies and procedures. The intent of the rulemaking action is to modify regulatory procedures that have been in

effect for over ten years. In many cases, the effect of the proposed amendments would be to relax or eliminate burdens on regulated entities. In most other cases, the new provisions clarify existing requirements and responsibilities. This action does not involve a substantial public interest or controversy. The rulemaking action would not have a substantial impact on any transportation safety program or on state and local governments. The impacts are so minimal as not to warrant the preparation of a full regulatory evaluation.

B. Regulatory Flexibility Act

We have also considered the effects of this action in relation to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

A RI commenter contested our conclusion in the preamble to the NPRM that the proposed rule would not have a significant economic impact upon a substantial number of small entities, choosing to base its conclusion on the multiple of estimated gray market vehicles imported in 2000 (200,000) by the "conservative average valuation of $12,000 per vehicle," or a gross dollar volume of $2.4 billion. However, the gross dollar volume associated with the gray market program has nothing to do with the issue of the impact of the proposed amendments. On the contrary, the overall costs of compliance with the new requirements imposed by this rule (*e.g.*, requiring RIs to maintain their own facility for conformance work and to have one full-time employee at a facility during normal business hours (which can be a corporate officer or partner of a partnership), requiring certification to NHTSA to be made by a principal of the RI, requiring applicants for RI status to provide additional information in their possession) are likely to be minimal. For these reasons, NHTSA does not accept the comment that the rulemaking action is likely to have a significant economic impact, requiring the agency, pursuant to 5 U.S.C. 609 to hold a public hearing on the rulemaking.

For the reasons discussed above under E.O. 12866 and the DOT Policies and Procedures, I certify that this action will not have a significant economic impact upon a substantial number of small entities.

The following is our statement providing the factual basis for our certification (5 U.S.C. 605(b)). The rule primarily affects Registered Importers (RIs) of motor vehicles. As of January 1, 2003, there were 168 entities that are currently RIs under 49 CFR Part 592. Most, if not all, RIs import motor vehicles for resale. That this is a profitable business is demonstrated by the large number of vehicles imported from Canada and the increasing number of applicants to become a RI. Most of the amendments adopted in the final rule are refinements and clarifications of existing RI obligations. We agree that many, if not most, RIs are small businesses as defined by the Small Business Administration's regulations, but we believe that the final rule will not have a significant economic impact upon a substantial number of small entities. Governmental jurisdictions will not be affected.

C. Executive Order 13132 (Federalism)

E. O. 13132 (64 FR 43255, August 10, 1999) revokes and replaces E.O.s 12612 "Federalism" and 12875 "Enhancing the Intergovernmental Partnership." E.O. 13132 requires NHTSA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." E.O. 13132 defines the term "Policies that have federalism implications" to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under E.O. 13132, NHTSA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or NHTSA consults with State and local officials early in the process of developing the proposed regulation.

One commenter noted that under Section 9(b) of E.O. 13132, "no agency shall promulgate any regulation that * * * imposes substantial direct compliance costs on state and local governments." The comment contended that State and local governments have incurred direct compliance costs based on the premise that the large increase in the number of Canadian vehicles must have increased the paperwork requirements in the States' motor vehicle title offices. The comment is not well taken. Any increase in the number of Canadian vehicles imported into the United States is independent of this rulemaking action. The final rule does not require any action by State or local governments. To the extent that there are indirect compliance costs involved in titling and registering an increased number of vehicles, these costs may be offset by the fees that States and local jurisdictions impose for these services.

Accordingly, we state that the final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government as specified in E.O. 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

D. National Environmental Policy Act

We have analyzed this action for purposes of the National Environmental Policy Act. The action will not have a significant effect upon the environment because the final rule would not impose any manufacturing requirements. We expect the volume of vehicles imported from Canada to fluctuate, independent of our rulemaking actions, based on differences in the exchange rate of the American and the Canadian dollar, and the presence or absence of incentive programs for new-car purchases.

E. Civil Justice Reform

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

F. Paperwork Reduction Act

The procedures in this rule to permit importation of motor vehicles and equipment not originally manufactured for the U.S. market include information collection requirements as that term is defined by OMB in 5 CFR Part 1320. The original information collection requirements were approved by the Office of Management and Budget (OMB) pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This collection of information has been assigned OMB Control No. 2127–0002 ("Motor Vehicle Information"). Under the final rule, new requirements will be imposed for RIs to retain records pertaining to modified vehicles for an additional two years, and for RIs and applicants for RI status to submit additional information to support an application for registration and the annual renewal of an existing registration. On October 3, 2003, the agency published, at 68 FR 57508, a notice describing these additional recordkeeping requirements and soliciting public comment thereon. Thereafter, on July 26, 2004, OMB approved this additional information collection as a revision to the collection

it previously approved under OMB Control No. 2127–0002. That approval also covers information collected by the agency through the HS–7 Declaration Form and the HS–474 Bond to Ensure Conformance with Motor Vehicle Safety and Bumper Standards.

G. Unfunded Mandates Reform Act of 1995

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

List of Subjects in 49 CFR Parts 591, 592, 594

Imports, Motor vehicle safety, Motor vehicles, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR parts 591, 592, and 594 are amended as follows:

PART 591—IMPORTATION OF VEHICLES AND EQUIPMENT SUBJECT TO FEDERAL SAFETY, BUMPER AND THEFT PREVENTION STANDARDS

■ 1. The authority citation for part 591 is revised to read as follows:

Authority: Pub. L. 100–562, 49 U.S.C. 322(a), 30117, 30141–30147; delegation of authority at 49 CFR 1.50.

■ 2. Section 591.4 is amended by adding the definitions for "Reconstructed motor vehicle" and "Salvage motor vehicle" in alphabetical order to read as follows:

§ 591.4 Definitions.

* * * * *

Reconstructed motor vehicle means a motor vehicle whose body is less than 25 years old and which is mounted on a chassis or frame that is not its original chassis or frame and that is less than 25 years old.

Salvage motor vehicle means a motor vehicle, whether or not repaired, which has been:

(1) Wrecked, destroyed, or damaged, to the extent that the total estimated or actual cost of parts and labor to rebuild or reconstruct the motor vehicle to its pre-accident condition and for legal operation on the streets, roads, or highways, exceeds 75 percent of its retail value at the time it was wrecked, destroyed, or damaged; or

(2) Wrecked, destroyed, or damaged, to which an insurance company acquires ownership pursuant to a damage settlement (other than a damage settlement in connection with a recovered theft vehicle unless such motor vehicle sustained sufficient damage to meet the 75 percent threshold specified in the first sentence); or

(3) Voluntarily designated as such by its owner, without regard to the extent of the motor vehicle's damage and repairs.

■ 3. Section 591.5 is amended as follows:

(a) By adding the word "and" following the semicolon at the end of paragraph (f)(2)(ii);

(b) By adding a new paragraph (f)(3); and,

(c) By adding a new paragraph (g).

The revisions and additions read as follows:

§ 591.5 Declarations required for importation.

* * * * *

(f) * * *

(3) The vehicle is not a salvage motor vehicle or a reconstructed motor vehicle.

(g) (For importations for personal use only) The vehicle was certified by its original manufacturer as complying with all applicable Canadian motor vehicle safety standards and its original manufacturer has informed NHTSA that it complies with all applicable Federal motor vehicle safety, bumper, and theft prevention standards, or that it complies with all such standards except for the labeling requirements of Federal Motor Vehicle Safety Standards Nos. 101 and 110 or 120, and/or the specifications of Federal Motor Vehicle Safety Standard No. 108 relating to daytime running lamps. The vehicle is not a salvage motor vehicle, a repaired salvage motor vehicle, or a reconstructed motor vehicle.

* * * * *

■ 4. Section 591.6 is amended by revising paragraph (c) to read as follows:

§ 591.6 Documents accompanying declarations.

* * * * *

(c) A declaration made pursuant to paragraph (f) of §591.5, and under a bond for the entry of a single vehicle, shall be accompanied by a bond in the form shown in Appendix A to this part, in an amount equal to 150% of the dutiable value of the vehicle, or, if under bond for the entry of more than one vehicle, shall be accompanied by a bond in the form shown in Appendix B to this part and by Customs Form CF 7501, for the conformance of the vehicle(s) with all applicable Federal motor vehicle safety and bumper standards, or, if conformance is not achieved, for the delivery of such vehicles to the Secretary of Homeland Security for export at no cost to the United Sates, or for its abandonment.

* * * * *

■ 5. Section 591.7 is amended by revising paragraph (e) to read as follows:

§ 591.7 Restrictions on importations.

* * * * *

(e) If the importer of a vehicle under §591.5(f)(2)(ii) has been notified in writing by the Registered Importer with which it has executed a contract or other agreement that the registration of the Registered Importer has been suspended (for other than the first time) or revoked, pursuant to §592.7 of this chapter, and that it has not affixed a certification label on the vehicle and/or filed a certification of conformance with the Administrator as required by §592.6 of this chapter, and that it therefore may not release the vehicle for the importer, the importer shall execute a contract or other agreement with another Registered Importer for the certification of the vehicle and submission of the certification of conformance to the Administrator. The Administrator shall toll the 120-day period for submission of a certification to the Administrator pursuant to §592.6(d) of this chapter during the period from the date of the Registered Importer's notification to the importer until the date of the contract with the substitute Registered Importer.

■ 6. Section 591.8 is amended by revising the introductory text of paragraph (d), and paragraphs (d)(1), (d)(3), and (d)(6) to read as follows:

§ 591.8 Conformance bond and conditions.

* * * * *

(d) In consideration of the release from the custody of the Bureau of Customs and Border Protection, or the withdrawal from a Customs bonded warehouse into the commerce of, or for consumption in, the United States, of a motor vehicle not originally manufactured to conform to applicable standards issued under part 571 and part 581 of this chapter, the obligors (principal and surety) shall agree to the following conditions of the bond:

(1) To have such vehicle brought into conformity with all applicable standards issued under part 571 and part 581 of this chapter within the number of days after the date of entry that the Administrator has established for such vehicle (to wit, 120 days);

* * * * *

(3) In the case of a Registered Importer, not to release custody of the

vehicle to any person for license or registration for use on public roads, streets, or highways, or license or register the vehicle from the date of entry until 30 calendar days after it has certified compliance of the vehicle to the Administrator, unless the Administrator has notified the principal before 30 calendar days that (s)he has accepted the certification, and that the vehicle and bond may be released, except that no such release shall be permitted, before or after the 30th calendar day, if the principal has received written notice from the Administrator that an inspection of the vehicle will be required or that there is reason to believe that such certification is false or contains a misrepresentation;

* * * * *

(6) If the principal has received written notice from the Administrator that the vehicle has been found not to comply with all applicable Federal motor vehicle safety and bumper standards, and written demand that the vehicle be abandoned to the United States, or delivered to the Secretary of Homeland Security for export (at no cost to the United States), or to abandon the vehicle to the United States, or to deliver the vehicle, or cause the vehicle to be delivered to, the custody of the Bureau of Customs and Border Protection at the port of entry listed above, or to any other port of entry, and to secure all documents necessary for exportation of the vehicle from the United States at no cost to the United States, or in default of abandonment or redelivery after prior notice by the Administrator to the principal, to pay to the Administrator the amount of the bond.

* * * * *

■ 7. Appendix A to part 591 is amended by revising the introductory text and Condition (6) to read as follows:

APPENDIX A TO PART 591—SECTION 591.5(f) BOND FOR THE ENTRY OF A SINGLE VEHICLE

Department of Transportation

National Highway Traffic Safety Administration

BOND TO ENSURE CONFORMANCE WITH FEDERAL MOTOR VEHICLE SAFETY AND BUMPER STANDARDS

(To redeliver vehicle, to produce documents, to perform conditions of release such as to bring vehicle into conformance with all applicable Federal motor vehicle safety and bumper standards)

Know All Men by These Presents That (principal's name, mailing address which includes city, state, ZIP code, and state of incorporation if a corporation), as principal, and (surety's name, mailing address which includes city, state, ZIP code and state of incorporation), as surety, are held and firmly bound unto the UNITED STATES OF AMERICA in the sum of (bond amount in words) dollars ($ (bond amount in numbers)), which represents 150% of the entered value of the following described motor vehicle, as determined by the Bureau of Customs and Border Protection: (make, model, model year, and VIN) for the payment of which we bind ourselves, our heirs, executors, and assigns (jointly and severally), firmly bound by these presents.

WITNESS our hands and seals this_____day of_____, 20____.

WHEREAS, motor vehicles may be entered under the provisions of 49 U.S.C. Chapters 301 and 325; and DOT Form HS–7 "Declaration;"

WHEREAS, pursuant to 49 CFR part 591, a regulation promulgated under the provisions of 49 U.S.C. Chapter 301, the above-bounden principal desires to import permanently the motor vehicle described above, which is a motor vehicle that was not originally manufactured to conform to the Federal motor vehicle safety or bumper standards; and

WHEREAS, pursuant to 49 CFR part 592, a regulation promulgated under the provisions of 49 U.S.C. Chapter 301, the above-bounden principal has been granted the status of Registered Importer of motor vehicles not originally manufactured to conform to the Federal motor vehicle safety and bumper standards (or, if not a Registered Importer, has a contract with a Registered Importer covering the vehicle described above); and

WHEREAS, pursuant to 49 CFR part 593, a regulation promulgated under 49 U.S.C. Chapter 301, the Administrator of the National Highway Traffic Safety Administration has decided that the motor vehicle described above is eligible for importation into the United States; and

WHEREAS, the motor vehicle described above has been imported at the port of _____, and entered at said port for consumption on entry No._____, dated _____, 20____;

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH THAT—

* * * * *

(6) And if the principal has received written notice from the Administrator that the vehicle has been found not to comply with all applicable Federal motor vehicle safety and bumper standards, and written demand that the vehicle be abandoned to the United States, or delivered to the Secretary of Homeland Security for export (at no cost to the United States), the principal shall abandon the vehicle to the United States, or shall deliver the vehicle, or cause the vehicle to be delivered to, the custody of the Bureau of Customs and Border Protection at the port of entry listed above, or any other port of entry, and shall execute all documents necessary for exportation of the vehicle from the United States, at no cost to the United States; or in default of abandonment or redelivery after proper notice by the Administrator to the principal, the principal shall pay to the Administrator the amount of this obligation;

* * * * *

■ 8. Appendix B to part 591 is amended by revising the introductory text of Appendix B and Condition (6) to read as follows:

APPENDIX B TO PART 591—SECTION 591.5(f) BOND FOR THE ENTRY OF MORE THAN A SINGLE VEHICLE

Department of Transportation

National Highway Traffic Safety Administration

BOND TO ENSURE CONFORMANCE WITH FEDERAL MOTOR VEHICLE SAFETY AND BUMPER STANDARDS

(To redeliver vehicles, to produce documents, to perform conditions of release such as to bring vehicles into conformance with all applicable Federal motor vehicle safety and bumper standards)

Know All Men by These Presents That (principal's name, mailing address which includes city, state, ZIP code, and state of incorporation if a corporation), as principal, and (surety's name, mailing address which includes city, state, ZIP code and state of incorporation) as surety, are held and firmly bound unto the UNITED STATES OF AMERICA in the sum of (bond amount in words) dollars ($ (bond amount in numbers)), which represents 150% of the entered value of the following described motor vehicle, as determined by the Bureau of Customs and Border Protection (make, model, model year, and VIN of each vehicle) for the payment of which we bind ourselves, our heirs, executors, and assigns (jointly and severally), firmly bound by these presents.

WITNESS our hands and seals this_____day of_____, 20____.

WHEREAS, motor vehicles may be entered under the provisions of 49 U.S.C. Chapters 301 and 325; and DOT Form HS–7 "Declaration,"

WHEREAS, pursuant to 49 CFR part 591, a regulation promulgated under the provisions of 49 U.S.C. Chapter 301, the above-bounden principal desires to import permanently the motor vehicles described above, which are motor vehicles that were not originally manufactured to conform to the Federal motor vehicle safety, or bumper, or theft prevention standards; and

WHEREAS, pursuant to 49 CFR part 592, a regulation promulgated under the provisions of 49 U.S.C. Chapter 301, the above-bounden principal has been granted the status of Registered Importer of motor vehicles not originally manufactured to conform to the Federal motor vehicle safety, bumper, and theft prevention standards; and

WHEREAS, pursuant to 49 CFR part 593, a regulation promulgated under 49 U.S.C. Chapter 301, the Administrator of the National Highway Traffic Safety Administration has decided that each motor vehicle described above is eligible for importation into the United States; and

WHEREAS, the motor vehicles described above have been imported at the port of_____, and entered at said port for

consumption on entry No._____, dated____, 20____;

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH THAT—

* * * * *

(6) And if the principal has received written notice from the Administrator that such vehicle has been found not to comply with all applicable Federal motor vehicle safety and bumper standards, and written demand that such vehicle be abandoned to the United States, or delivered to the Secretary of Homeland Security for export (at no cost to the United States), the principal shall abandon such vehicle to the United States, or shall deliver such vehicle, or cause such vehicle to be delivered to, the custody of the Bureau of Customs and Border Protection at the port of entry listed above, or any other port of entry, and shall execute all documents necessary for exportation of such vehicle from the United States, at no cost to the United States; or in default of abandonment or redelivery after proper notice by the Administrator to the principal, the principal shall pay to the Administrator an amount equal to 150% of the entered value of such vehicle as determined by the Bureau of Customs and Border Protection.

* * * * *

PART 592—REGISTERED IMPORTERS OF VEHICLES NOT ORIGINALLY MANUFACTURED TO CONFORM TO THE FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 9. The authority citation for part 592 is revised to read as follows:

Authority: Pub. L. 100–562, 49 U.S.C. 322(a), 30117, 30141–30147; delegation of authority at 49 CFR 1.50.

■ 10. Section 592.4 is amended by adding the definitions of "Independent insurance company", "Principal", "Safety recall", and "Service insurance policy" in alphabetical order to read as follows:

§ 592.4 Definitions

* * * * *

Independent insurance company means an entity that is registered with any State and authorized by that State to conduct an insurance business including the issuance or underwriting of a service insurance policy, none of whose affiliates, shareholders, officers, directors, or employees, or any person in affinity with such, is employed by, or has a financial interest in, or otherwise controls or participates in the business of, a Registered Importer to which it issues or underwrites a service insurance policy.

* * * * *

Principal, with respect to a Registered Importer, means any officer of a corporation, a general partner of a partnership, or the sole proprietor of a sole proprietorship. The term includes a director of an incorporated Registered Importer, and any person whose ownership interest in a Registered Importer is 10% or more.

* * * * *

Safety recall means a notification and remedy campaign conducted pursuant to 49 U.S.C. 30118–30120 to address a noncompliance with a Federal motor vehicle safety standard or a defect that relates to motor vehicle safety.

Service insurance policy means any policy issued or underwritten by an independent insurance company which covers a specific motor vehicle and guarantees that any noncompliance with a Federal motor vehicle safety standard or defect related to motor vehicle safety determined to exist in that vehicle will be remedied without charge to the owner of the vehicle.

■ 11. Section 592.5 is amended by revising paragraphs (a)(3), (4), (5), (9), and (11), (b), (d), (e) and (f) and by adding a new paragraph (h) to read as follows:

§ 592.5 Requirements for registration and its maintenance.

(a) * * *

(3) Sets forth the full name, street address, and title of the person preparing the application, and the full name, street address, e-mail address (if any), and telephone and facsimile machine (if any) numbers in the United States of the person for whom application is made (the "applicant").

(4) Specifies the form of the applicant's organization (*i.e.*, sole proprietorship, partnership, or corporation) and the State under which it is organized, and:

(i) If the applicant is an individual, the application must include the full name, street address, date of birth, and Social Security Number of the individual;

(ii) If the applicant is a partnership, the application must include the full name, street address, date of birth, and Social Security Number of each partner; if one or more of the partners is a limited partnership, the application must include the names and street addresses of the general partners and limited partners; if one or more of the partners is a corporation, the application must include the information specified by either paragraph (a)(4)(iii) or (iv) of this section, as applicable;

(iii) If the applicant is a non-public corporation, the application must include the full name, street address, date of birth, and Social Security Number of each officer, director, manager, and person who is authorized to sign documents on behalf of the corporation. The application must also include the name of any person who owns or controls 10 percent or more of the corporation. The applicant must also provide a statement issued by the Office of the Secretary of State, or other responsible official of the State in which the applicant is incorporated, certifying that the applicant is a corporation in good standing;

(iv) If the applicant is a public corporation, the applicant must include a copy of its latest 10–K filing with the Securities and Exchange Commission, and provide the name and address of any person who is authorized to sign documents on behalf of the corporation;

(v) Contains a statement that the applicant has never had a registration revoked pursuant to §592.7, nor is it, nor was it, directly or indirectly, owned or controlled by, or under common ownership or control with, a Registered Importer that has had a registration revoked pursuant to §592.7; and

(vi) Identifies any shareholder, officer, director, employee, or any person in affinity with such, who has been previously affiliated with another Registered Importer in any capacity. If any such persons are identified, the applicant shall state the name of each such Registered Importer and the affiliation of any identified person.

(5) Includes the following:

(i) The street address and telephone number in the United States of each of its facilities for conformance, storage, and repair that the applicant will use to fulfill its duties as a Registered Importer and where the applicant will maintain the records it is required by this part to keep;

(ii) The street address that the applicant designates as its mailing address (in addition, an applicant may list a post office box, provided that it is in the same city as the street address designated as its mailing address);

(iii) A copy of the applicant's business license or other similar document issued by an appropriate State or local authority, authorizing it to do business as an importer, or modifier, or seller of motor vehicles, as applicable to the applicant and with respect to each facility that the applicant has identified pursuant to paragraph (a)(5)(i) of this section, or a statement by the applicant that it has made a bona fide inquiry and is not required by such State or local authority to have such a license or document;

(iv) The name of each principal of the applicant whom the applicant authorizes to submit conformity certifications to NHTSA and the street address of the repair, storage, or conformance facility where each such principal will be located; and

(v) If an applicant is a corporation not organized under the laws of a State of the United States, or is a sole proprietorship or partnership located outside the United States, the application must be accompanied by the applicant's designation of an agent for service of process in the form specified by Section 551.45 of this chapter.

* * * * *

(9) Sets forth in full complete descriptive information, views, and arguments sufficient to establish that the applicant:

(i) Is technically able to modify any nonconforming motor vehicle to conform to all applicable Federal motor vehicle safety and bumper standards, including but not limited to the professional qualifications of the applicant and its employees at the time of the application (such as whether any such persons have been certified as mechanics), and a description of their experience in conforming and repairing vehicles;

(ii) Owns or leases one or more facilities sufficient in nature and size to repair, conform, and store the vehicles for which it provides certification of conformance to NHTSA and which it imports and may hold pending release of conformance bonds, including a copy of a deed or lease evidencing ownership or tenancy for each such facility, still or video photographs of each such facility, the street address and telephone number of each such facility;

(iii) Is financially and technically able to provide notification of and to remedy a noncompliance with a Federal motor vehicle safety standard or a defect related to motor vehicle safety determined to exist in the vehicles that it imports and/or for which it provides certification of conformity to NHTSA through repair, repurchase or replacement of such vehicles; and

(iv) Is able to acquire and maintain information regarding the vehicles that it imported and the names and addresses of owners of the vehicles that it imported and/or for which it provided certifications of conformity to NHTSA in order to notify such owners when a noncompliance or a defect related to motor vehicle safety has been determined to exist in such vehicles.

* * * * *

(11) Contains the statement: "I certify that I have read and understood the duties of a Registered Importer, as set forth in 49 CFR 592.6, and that [name of applicant] will fully comply with each such duty. I further certify that all the information provided in this application is true and correct. I further certify that I understand that, in the event the registration for which it is applying is suspended or revoked, or lapses, [name of applicant] will remain obligated to notify owners and to remedy noncompliances or safety related defects, as required by 49 CFR 592.6(j), for each vehicle for which it has furnished a certificate of conformity to the Administrator."

(b) If the application is incomplete, the Administrator notifies the applicant in writing of the information that is needed for the application to be complete and advises that no further action will be taken on the application until the applicant has furnished all the information needed.

* * * * *

(d) When the application is complete (and, if applicable, when the applicant has paid a sum representing the inspection component of the initial annual fee), the Administrator reviews the application and decides whether the applicant has complied with the requirements prescribed in paragraph (a) of this section. The Administrator shall base this decision on the application and upon any inspection NHTSA may have conducted of the applicant's conformance, storage, and recordkeeping facilities and any assessment of the applicant's personnel. If the Administrator decides that the applicant complies with the requirements, (s)he informs the applicant in writing and issues it a Registered Importer Number.

(e)(1) The Administrator shall deny registration to any applicant who (s)he decides does not comply with the requirements of paragraph (a) of this section and to an applicant whose previous registration has been revoked. The Administrator also may deny registration to an applicant that is or was owned or controlled by, or under common ownership or control with, or in affinity with, a Registered Importer whose registration has been revoked. In determining whether to deny an application, the Administrator may consider whether the applicant is comprised in whole or in part of relatives, employees, major shareholders, partners, or relatives of former partners or major shareholders, of a Registered Importer whose registration was revoked.

(2) If the Administrator denies an application, (s)he informs the applicant in writing of the reasons for denial and that the applicant is entitled to a refund of that component of the initial annual fee representing the remaining costs of administration of the registration program, but not those components of the initial annual fee representing the costs of processing the application, and, if applicable, the costs of conducting an inspection of the applicant's facilities.

(3) Within 30 days from the date of the denial, the applicant may submit a petition for reconsideration. The applicant may submit information and/or documentation supporting its request. If the Administrator grants registration as a result of the request, (s)he notifies the applicant in writing and issues it a Registered Importer Number. If the Administrator denies registration, (s)he notifies the applicant in writing and refunds that component of the initial annual fee representing the remaining costs of administration of the registration program, but does not refund those components of the initial annual fee representing the costs of processing the application, and, if applicable, the costs of conducting an inspection.

(f) In order to maintain its registration, a Registered Importer must file an annual statement. The Registered Importer must affirm in its annual statement that all information provided in its application or pursuant to § 592.6(r), or as may have been changed in any notification that it has provided to the Administrator in compliance with § 592.6(m), remains correct, and that it continues to comply with the requirements for being a Registered Importer. The Registered Importer must include with its annual statement a current copy of its service insurance policy. Such statement must be titled "Yearly Statement of Registered Importer," and must be filed not later than September 30 of each year. A Registered Importer must also pay any annual fee, and any other fee that is established under part 594 of this chapter. An annual fee must be paid not later than September 30 of any calendar year for the fiscal year that begins on October 1 of that calendar year. The Registered Importer must pay any other fee not later than 15 days after the date of the written notice from the Administrator.

* * * * *

(h) An applicant whose application is pending on September 30, 2004, and which has not provided the information required by paragraph (a) of this section, as amended, must provide all the information required by that subsection before the Administrator will give further consideration to the application.

■ 12. Section 592.6 is revised to read as follows:

§ 592.6 Duties of a registered importer.

Each Registered Importer must:

(a) With respect to each motor vehicle that it imports into the United States,

assure that the Administrator has decided that the vehicle is eligible for importation pursuant to part 593 of this chapter, prior to such importation. The Registered Importer must also bring such vehicle into conformity with all applicable Federal motor vehicle safety standards prescribed under part 571 of this chapter and the bumper standard prescribed under part 581 of this chapter, if applicable, and furnish certification to the Administrator pursuant to paragraph (e) of this section, within 120 calendar days after such entry. For each motor vehicle, the Registered Importer must furnish to the Secretary of Homeland Security at the time of importation a bond in an amount equal to 150 percent of the dutiable value of the vehicle, as determined by the Secretary of Homeland Security, to ensure that such vehicle either will be brought into conformity with all applicable Federal motor vehicle safety and bumper standards or will be exported (at no cost to the United States) by the importer or the Secretary of Homeland Security or abandoned to the United States. However, if the Registered Importer has procured a continuous entry bond, it must furnish the Administrator with such bond, and must furnish the Secretary of Homeland Security (acting on behalf of the Administrator) with a photocopy of such bond and Customs Form CF 7501 at the time of importation of each motor vehicle.

(b) Establish, maintain, and retain, for 10 years from the date of entry, at the facility in the United States it has identified in its application pursuant to § 592.5 (a)(5)(i), for each motor vehicle for which it furnishes a certificate of conformity, the following records, including correspondence and other documents, in hard copy format:

(1) The declaration required by § 591.5 of this chapter.

(2) All vehicle or equipment purchase or sales orders or agreements, conformance agreements between the Registered Importer and persons who import motor vehicles for personal use, and correspondence between the Registered Importer and the owner or purchaser of the vehicle.

(3) The make, model, model year, odometer reading, and VIN of each vehicle that it imports and the last known name and address of the owner or purchaser of the vehicle.

(4) Records, including photographs and other documents, sufficient to identify the vehicle and to substantiate that it has been brought into conformity with all Federal motor vehicle safety and bumper standards that apply to the vehicle, that the certification label has been affixed, and that either the vehicle is not subject to any safety recalls or that all noncompliances and safety defects covered by such recalls were remedied before the submission to the Administrator under paragraph (d) of this section. All photographs submitted shall be unaltered.

(5) A copy of the certification submitted to the Administrator pursuant to paragraph (d) of this section.

(6) The number that the issuer has assigned to the service insurance policy that will accompany the vehicle and the full corporate or other business name of the issuer of the policy, and substantiation that the Registered Importer has notified the issuer of the policy that the policy has been provided with the vehicle.

(c) Take possession of the vehicle and perform all modifications necessary to conform the vehicle to all Federal motor vehicle safety and bumper standards that apply to the vehicle at a facility that it has identified to the Administrator pursuant to § 592.5(a)(5)(i), and permanently affix to the vehicle at that facility, upon completion of conformance modifications and remedy of all noncompliances and defects that are the subject of any pending safety recalls, a label that identifies the Registered Importer and states that the Registered Importer certifies that the vehicle complies with all Federal motor vehicle safety and bumper standards that apply to the vehicle, and contains all additional information required by § 567.4 of this chapter.

(d) For each motor vehicle, certify to the Administrator:

(1) Within 120 days of the importation that it has brought the motor vehicle into conformity with all applicable Federal motor vehicle safety and bumper standards in effect at the time the vehicle was manufactured by the fabricating manufacturer. Such certification shall state verbatim either that "I know that the vehicle that I am certifying conforms with all applicable Federal motor vehicle safety and bumper standards because I personally witnessed each modification performed on the vehicle to effect compliance," or that "I know that the vehicle I am certifying conforms with all applicable Federal motor vehicle safety and bumper standards because the person who performed the necessary modifications to the vehicle is an employee of [RI name] and has provided full documentation of the work that I have reviewed, and I am satisfied that the vehicle as modified complies." The Registered Importer shall also certify, as appropriate, that either:

(i) The vehicle is not required to comply with the parts marking requirements of the theft prevention standard (part 541 of this chapter); or

(ii) The vehicle complied as manufactured with those parts marking requirements.

(2) If the Registered Importer certifies that the vehicle was originally manufactured to comply with a standard that does not apply to the vehicle or that it has modified the vehicle to conform to such standard, or if the certification is incomplete, the Administrator may refuse to accept the certification. The Administrator shall refuse to accept a certification for a vehicle that has not been determined to be eligible for importation under part 593 of this chapter. If the Administrator does not accept a submission, (s)he shall return it to the Registered Importer. The costs associated with such a return will be charged to the Registered Importer. If the Administrator returns the submission as described above and the vehicle is eligible for importation, the 120-day period specified in paragraph (d)(1) of this section continues to run, but the 30-day period specified in paragraph (f) of this section does not begin to run until the Administrator has accepted the submission. If the vehicle is not eligible for importation, the importer must export it from, or abandon it to, the United States. If the Registered Importer certifies that it has modified the vehicle to bring it into compliance with a standard and has, in fact, not performed all required modifications, the Administrator will regard such certification as "knowingly false" within the meaning of 49 U.S.C. 30115 and 49 U.S.C. 30141(c)(4)(B).

(3) The certification must be signed and submitted by a principal of the Registered Importer designated in its registration application pursuant to § 592.5(a)(5)(iv), with an original hand-written signature and not with a signature that is stamped or mechanically applied.

(4) The certification to the Administrator must specify the location of the facility where the vehicle was conformed, and the location where the Administrator may inspect the motor vehicle.

(5) The certification to the Administrator must state and contain substantiation either that the vehicle is not subject to any safety recalls as of the time of such certification, or, alternatively, that all noncompliances and defects that are the subject of those safety recalls have been remedied.

(6) When a Registered Importer certifies a make, model, and model year

of a motor vehicle for the first time, its certification must include:

(i) The make, model, model year and date of manufacture, odometer reading, VIN that complies with § 565.4(b), (c), and (g) of this chapter, and Customs Entry Number,

(ii) A statement that it has brought the vehicle into conformity with all Federal motor vehicle safety and bumper standards that apply to the vehicle, and a description, with respect to each standard for which modifications were needed, of the modifications performed,

(iii) A copy of the bond given at the time of entry to ensure conformance with the safety and bumper standards,

(iv) The vehicle's vehicle eligibility number, as stated in Appendix A to part 593 of this chapter,

(v) A copy of the HS–7 Declaration form executed at the time of its importation if a Customs broker did not make an electronic entry for the vehicle with the Bureau of Customs and Border Protection,

(vi) Unaltered front, side, and rear photographs of the vehicle,

(vii) Unaltered photographs of the original manufacturer's certification label and the certification label of the Registered Importer affixed to the vehicle (and, if the vehicle is a motorcycle, a photograph or photocopy of the Registered Importer certification label before it has been affixed),

(viii) Unaltered photographs and documentation sufficient to demonstrate conformity with all applicable Federal motor vehicle safety and bumper standards to which the vehicle was not originally manufactured to conform,

(ix) The policy number of the service insurance policy furnished with the vehicle pursuant to paragraph (g) of this section, and the full corporate or other business name of the insurer that issued the policy, and

(x) A statement that the submission is the Registered Importer's initial certification submission for the make, model, and model year of the vehicle covered by the certification.

(7) Except as specified in this paragraph, a Registered Importer's second and subsequent certification submissions for a given make, model, and model year vehicle must contain the information required by paragraph (d)(6) of this section. If the Registered Importer conformed such a vehicle in the same manner as it stated in its initial certification submission, it may say so in a subsequent submission and it need not provide the description required by paragraph (d)(6)(ii) of this section.

(e) With respect to each motor vehicle that it imports, not take any of the following actions until the bond referred to in paragraph (a) of this section has been released, unless 30 days have elapsed from the date the Administrator receives the Registered Importer's certification of compliance of the motor vehicle in accordance with paragraph (d) of this section (the 30-day period will be extended if the Administrator has made written demand to inspect the motor vehicle):

(1) Operate the motor vehicle on the public streets, roads, and highways for a purpose other than transportation to and from a franchised dealership of the vehicle's original manufacturer for remedying a noncompliance or safety-related defect;

(2) Sell the motor vehicle or offer it for sale;

(3) Store the motor vehicle on the premises of a motor vehicle dealer;

(4) Title the motor vehicle in a name other than its own, or license or register it for use on public streets, roads, or highways; or

(5) Release custody of the motor vehicle to a person for sale, or for license or registration for use on public streets, roads, and highways, or for titling in a name other than that of the Registered Importer who imported the vehicle.

(f) Furnish with each motor vehicle for which it furnishes certification or information to the Administrator in accordance with paragraph (d) of this section, not later than the time it sells the vehicle, or releases custody of a vehicle to an owner who has imported it for personal use, a service insurance policy written or underwritten by an independent insurance company, in the amount of $2,000. The Registered Importer shall provide the insurance company with a monthly list of the VINs of vehicles covered by the policies of the insurance company, and shall retain a copy of each such list in its files.

(g) Comply with the requirements of part 580 of this chapter, *Odometer Disclosure Requirements,* when the Registered Importer is a transferor of a vehicle as defined by § 580.3 of this chapter.

(h) With respect to any motor vehicle it has imported and for which it has furnished a performance bond, deliver such vehicle to the Secretary of Homeland Security for export, or abandon it to the United States, upon demand by the Administrator, if such vehicle has not been brought into conformity with all applicable Federal motor vehicle safety and bumper standards within 120 days from entry.

(i)(1) With respect to any motor vehicle that it has imported or for which it has furnished a certificate of conformity or information to the Administrator as provided in paragraph (d) of this section, provide notification in accordance with part 577 of this chapter and a remedy without charge to the vehicle owner, after any notification under part 573 of this chapter that a vehicle to which such motor vehicle is substantially similar contains a defect related to motor vehicle safety or fails to conform with an applicable Federal motor vehicle safety standard. However, this obligation does not exist if the manufacturer of the vehicle or the Registered Importer of such vehicle demonstrates to the Administrator that the defect or noncompliance is not present in such vehicle, or that the defect or noncompliance was remedied before the submission of the certificate or the information to the Administrator, or that the original manufacturer of the vehicle will provide such notification and remedy.

(2) If a Registered Importer becomes aware (from whatever source) that the manufacturer of a vehicle it has imported will not provide a remedy without charge for a defect or noncompliance that has been determined to exist in that vehicle, within 30 days thereafter, the Registered Importer must inform NHTSA and submit a copy of the notification letter that it intends to send to owners of the vehicle(s) in question.

(3) Any notification to vehicle owners sent by a Registered Importer must contain the information specified in § 577.5 of this chapter, and must include the statement that if the Registered Importer's repair facility is more than 50 miles from the owner's mailing address, remedial repairs may be performed at no charge at a specific facility designated by the Registered Importer that is within 50 miles of the owner's mailing address, or, if no such facility is designated, that repairs may be performed anywhere, with the cost of parts and labor to be reimbursed by the Registered Importer.

(4) Defect and noncompliance notifications by a Registered Importer must conform to the requirements of §§ 577.7 and 577.8 of this chapter, and are subject to §§ 577.9 and 577.10 of this chapter.

(5) Except as provided in this paragraph, instead of the six quarterly reports required by § 573.7(a) of this chapter, the Registered Importer must submit to the Administrator two reports containing the information specified in § 573.7(b)(1) through (4) of this chapter. The reports shall cover the periods ending nine and 18 months after the commencement of the owner notification campaign, and must be

submitted within 30 days of the end of each period. However, the reporting requirements established by this paragraph shall not apply to any safety recall that a vehicle manufacturer conducts that includes vehicles for which the Registered Importer has submitted the information required by paragraph (d) of this section.

(6) The requirement that the remedy be provided without charge does not apply if the motor vehicle was bought by its first purchaser from the Registered Importer (or, if imported for personal use, conformed pursuant to a contract with the Registered Importer) more than 10 calendar years before the date the Registered Importer or the original manufacturer notifies the Administrator of the noncompliance or safety-related defect pursuant to part 573 of this chapter.

(j) In order that the Administrator may determine whether the Registered Importer is meeting its statutory responsibilities, allow representatives of NHTSA during operating hours, upon demand, and upon presentation of credentials, to copy documents, or to inspect, monitor, or photograph any of the following:

(1) Any facility identified by the Registered Importer where any vehicle for which a Registered Importer has the responsibility of providing a certificate of conformity to the Administrator is being modified, repaired, tested, or stored, and any facility where any record or other document relating to the modification, repair, testing, or storage of these vehicles is kept;

(2) Any part or aspect of activities relating to the modification, repair, testing, or storage of vehicles by the Registered Importer; and

(3) Any motor vehicle for which the Registered Importer has provided a certification of conformity to the Administrator before the Administrator releases the conformance bond.

(k) Provide an annual statement and pay an annual fee as required by § 592.5(f).

(l) Except as noted in this paragraph, notify the Administrator in writing of any change that occurs in the information which was submitted in its registration application, not later than the 30th calendar day after such change. If a Registered Importer intends to use a facility that was not identified in its registration application, not later than 30 days before it begins to use such facility, it must notify the Administrator of its intent to use such facility and provide a description of the intended use, a copy of the lease or deed evidencing the Registered Importer's ownership or tenancy of the facility, and a copy of the license or similar document issued by an appropriate state or municipal authority stating that the Registered Importer is licensed to do business at that facility as an importer and/or modifier and/or seller of motor vehicles (or a statement that it has made a *bona fide* inquiry and is not required by state or local law to have such a license or permission), and a sufficient number of unaltered photographs of that facility to fully depict the Registered Importer's intended use. If a Registered Importer intends to change its street address or telephone number or discontinue use of a facility that was identified in its registration application, it shall notify the Administrator not less than 10 days before such change or discontinuance of such use, and identify the facility, if any, that will be used instead.

(m) Assure that at least one full-time employee of the Registered Importer is present at at least one of the Registered Importer's facilities in the United States during normal business hours.

(n) Not co-utilize the same employee, or any repair or conformance facility, with any other Registered Importer. If a Registered Importer co-utilizes the same storage facility with another Registered Importer or another entity, the storage area of each Registered Importer must be clearly delineated, and the vehicles being stored by each Registered Importer may not be mingled with vehicles for which that Registered Importer is not responsible.

(o) Make timely, complete, and accurate responses to any requests by the Administrator for information, whether by general or special order or otherwise, to enable the Administrator to decide whether the Registered Importer has complied or is complying with 49 U.S.C. Chapters 301 and 325, and the regulations issued thereunder.

(p) Pay all fees either by certified check, cashier's check, money order, credit card, or Electronic Funds Transfer System made payable to the Treasurer of the United States, in accordance with the invoice of fees incurred by the Registered Importer in the previous month that is provided by the Administrator. All such fees are due and payable not later than 15 days from the date of the invoice.

(q) Not later than November 1, 2004, file with the Administrator all information required by § 592.5(a), as amended. If a Registered Importer has previously provided any item of information to the Administrator in its registration application, annual statement, or notification of change, it may incorporate that item by reference in the filing required under this subsection, provided that it clearly indicates the date, page, and entry of the previously-provided document.

■ 13. Section 592.7 is revised to read as follows:

§ 592.7 Suspension, revocation, and reinstatement of suspended registrations.

This section specifies the acts and omissions that may result in suspensions and revocations of registrations issued to Registered Importers by NHTSA, the process for such suspensions and revocations, and the provisions applicable to the reinstatement of suspended registrations.

(a) *Automatic suspension of a registration.* 49 U.S.C. 30141(c)(4)(B) explicitly authorizes NHTSA to automatically suspend a registration when a Registered Importer does not, in a timely manner, pay a fee required by part 594 of this chapter or knowingly files a false or misleading certification under 49 U.S.C. 30146. NHTSA also may automatically suspend a registration under other circumstances, as specified in paragraphs (3), (4) and (5) of this section.

(1) If the Administrator has not received the annual fee from a Registered Importer by the close of business on October 10 of a year, or, if October 10 falls on a weekend or holiday, by the next business day thereafter, or has not received any other fee owed by a Registered Importer within 15 calendar days from the date of the Administrator's invoice, the Registered Importer's registration will be automatically suspended at the beginning of the next business day. The Administrator will promptly notify the Registered Importer in writing of the suspension. Such suspension shall remain in effect until reinstated pursuant to paragraph (c)(1) of this section.

(2) If the Administrator decides that a Registered Importer has knowingly filed a false or misleading certification, (s)he shall promptly notify the Registered Importer in writing that its registration is automatically suspended. The notification shall inform the Registered Importer of the facts and conduct upon which the decision is based, and the period of suspension (which begins as of the date indicated in the Administrator's written notification). The notification shall afford the Registered Importer an opportunity to seek reconsideration of the decision by presenting data, views, and arguments in writing and/or in person, within 30 days. Not later than 30 days after the submission of data, views, and arguments, the Administrator, after

considering all the information available, shall notify the Registered Importer in writing of his or her decision on reconsideration. Any suspension issued under this paragraph shall remain in effect until reinstated pursuant to paragraph (c)(2) of this section.

(3) If mail is undeliverable to the Registered Importer at the official street address it has provided to the Administrator, or if the telephone has been disconnected at the telephone number specified by the Registered Importer, the Administrator may automatically suspend the Registered Importer's registration. Such suspension shall remain in effect until the registration is reinstated pursuant to paragraph (c)(3) of this section.

(4) If a Registered Importer, not later than November 1, 2004, does not file with the Administrator all information required by § 592.5(a), as required by § 592.6(q), the Administrator may automatically suspend the registration. The Administrator shall promptly notify the Registered Importer in writing of the suspension. Such a suspension shall remain in effect until the registration is reinstated pursuant to paragraph (c)(4) of this section.

(5) If a Registered Importer releases one or more motor vehicles on the basis of a forged or falsified bond release letter, and the Administrator has not in fact issued such a letter, the Administrator may automatically suspend the registration. The Administrator shall promptly notify the Registered Importer in writing of the suspension.

(6) The Administrator, in his or her sole discretion, may provide notice of a proposed automatic suspension or revocation for reasons specified in paragraphs (a)(1) through (a)(5) of this section.

(7) The notification shall afford the Registered Importer an opportunity to seek reconsideration of the decision by presenting data, views, and arguments in writing and/or in person, within 30 days of such notification, before a decision, as provided in paragraph (b)(2) of this section. Not later than 30 days after the submission of data, views, and arguments, the Administrator, after considering all the information available, shall notify the Registered Importer in writing of his or her decision on reconsideration. Any automatic suspension issued under this paragraph shall remain in effect until reinstated pursuant to paragraph (c)(2) of this section.

(b) *Non-automatic suspension or revocation of a registration.* (1) 49 U.S.C. 30141(c)(4)(A) authorizes NHTSA to revoke or suspend a registration if a Registered Importer does not comply with a requirement of 49 U.S.C. 30141–30147, or any of 49 U.S.C. 30112, 30115, 30117–30122, 30125(c), 30127, or 30166, or any regulations issued under these sections. These regulations include, but are not limited to, parts 567, 568, 573, 577, 591, 593, and 594 of this chapter.

(2) When the Administrator has reason to believe that a Registered Importer has violated one or more of the statutes or regulations cited in paragraph (b)(1) of this section and that suspension or revocation would be an appropriate sanction under the circumstances, (s)he shall notify the Registered Importer in writing of the facts giving rise to the allegation of a violation and the proposed length of a suspension, if applicable, or revocation. The notice shall afford the Registered Importer an opportunity to present data, views, and arguments, in writing and/or in person, within 30 days of the date of the notice, as to whether the violation occurred, why the registration ought not to be suspended or revoked, or whether the suspension should be shorter than proposed. If the Administrator decides, on the basis of the available information, that the Registered Importer has violated a statute or regulation, the Administrator may suspend or revoke the registration. The Administrator shall notify the Registered Importer in writing of the decision, including the reasons for it. A suspension or revocation is effective as of the date of the Administrator's written notification unless another date is specified therein. The Administrator shall state the period of any suspension in the notice to the Registered Importer. There shall be no opportunity to seek reconsideration of a decision issued under this paragraph.

(c) *Reinstatement of suspended registrations.* (1) When a registration has been suspended under paragraph (a)(1) of this section, the Administrator will reinstate the registration when all fees owing are paid by wire transfer or certified check from a bank in the United States, together with a sum representing 10 percent of the amount of the fees that were not timely paid.

(2) When a registration has been suspended under paragraph (a)(2) or (a)(5) of this section, the registration will be reinstated after the expiration of the period of suspension specified by the Administrator, or such earlier date as the Administrator may subsequently decide is appropriate.

(3) When a registration has been suspended under paragraph (a)(3) of this section, the registration will be reinstated when the Administrator decides that the Registered Importer has provided a street address to which mail to it is deliverable and a telephone number in its name that is in service.

(4) When a registration has been suspended under paragraph (a)(4) of this section, the registration will be reinstated when the Administrator decides that the Registered Importer has provided all relevant documentation and information required by § 592.6(q).

(5) When a registration has been suspended under paragraph (b) of this section, the registration will be reinstated after the expiration of the period of suspension specified by the Administrator, or such earlier date as the Administrator may subsequently decide is appropriate.

(6) When a suspended registration has been reinstated, NHTSA shall notify the Bureau of Customs and Border Protection promptly.

(7) If a Registered Importer imports a motor vehicle on or after the date that its registration is suspended and before the date that the suspension ends, the Administrator may extend the suspension period by one day for each day that the Registered Importer has imported a motor vehicle during the time that its registration has been suspended.

(d) *Effect of suspension or revocation.* (1) If a Registered Importer's registration is suspended or revoked, as of the date of suspension or revocation the entity will not be considered a Registered Importer, will not have the rights and authorities appertaining thereto, and must cease importing, and will not be allowed to import, vehicles for resale. The Registered Importer will not be refunded any annual or other fees it has paid for the fiscal year in which its registration is revoked. The Administrator shall notify the Bureau of Customs and Border Protection of any suspension or revocation of a registration not later than the first business day after such action is taken.

(2) With respect to any vehicle for which it has not affixed a certification label and submitted a certificate of conformity to the Administrator under § 592.6(d) at the time it is notified that its registration has been suspended or revoked, the Registered Importer must affix a certification label and submit a certificate of conformity within 120 days from the date of entry.

(3) When a registration has been revoked or suspended, the Registered Importer must export within 30 days of the effective date of the suspension or revocation all vehicles that it imported to which it has not affixed a certification label and furnished a certificate of

conformity to the Administrator pursuant to § 592.6(d).

(4) With respect to any vehicle imported pursuant to § 591.5(f)(2)(ii) of this chapter that the Registered Importer has agreed to bring into compliance with all applicable standards and for which it has not certified and furnished a certificate of conformity to the Administrator, the Registered Importer must immediately notify the owner of the vehicle in writing that its registration has been suspended or revoked.

(e) *Continuing obligations.* A Registered Importer whose registration is suspended or revoked remains obligated under § 592.6(i) to notify owners and to remedy noncompliances or safety related defects for each vehicle for which it has furnished a certificate of conformity to the Administrator.

■ 14. Section 592.8 is amended by revising paragraph (a), the first sentence of paragraphs (c) and (d), and paragraph (e), to read as follows:

§ 592.8 Inspection; release of vehicle and bond.

(a) With respect to any motor vehicle for which it must provide a certificate of conformity to the Administrator as required by § 592.6(d), a Registered Importer shall not obtain title, licensing, or registration of the motor vehicle for use on the public roads, or release custody of it for such titling, licensing, or registration, except in accordance with the provisions of this section.

* * * * *

(c) Before the end of the 30th calendar day after receiving a complete certification under § 592.6(d), the Administrator may notify the Registered Importer in writing that an inspection of the vehicle is required to verify the certification. * * *

(d) The Administrator may by written notice request the Registered Importer to verify its certification of a motor vehicle before the end of the 30th calendar day after the date the Administrator receives a complete certification under § 592.6(d). * * *

(e) If the Registered Importer has received no written notice from the Administrator by the end of the 30th calendar day after it has furnished a complete certification under section 592.6(d) of this chapter, the Registered Importer may release the vehicle from custody, sell or offer it for sale, or have it titled, licensed, or registered for use on the public roads.

* * * * *

■ 15. Section 592.9 is added to read:

§ 592.9 Forfeiture of bond.

A Registered Importer is required by § 591.6 of this chapter to furnish a bond with respect to each motor vehicle that it imports. The conditions of the bond are set forth in § 591.8 of this chapter. Failure to fulfill any one of these conditions may result in forfeiture of the bond. A bond may be forfeited if the Registered Importer:

(a) Fails to bring the motor vehicle covered by the bond into compliance with all applicable standards issued under part 571 and part 581 of this chapter within 120 days from the date of entry;

(b) Fails to file with the Administrator a certificate that the motor vehicle complies with each Federal motor vehicle safety, bumper, and theft prevention standard in effect at the time the vehicle was manufactured and which applies to the vehicle;

(c) Fails to cause a motor vehicle to be available for inspection if it has received written notice from the Administrator that an inspection is required;

(d) Releases the motor vehicle before the Administrator accepts the certification and any modification thereof, if it has received written notice from the Administrator that there is reason to believe that the certification is false or contains a misrepresentation;

(e) Before the bond is released, releases custody of the motor vehicle to any person for license or registration for use on public roads, streets, and highways, or licenses or registers the vehicle, including titling the vehicle in the name of another person, unless 30 calendar days have elapsed after the Registered Importer has filed a complete certification under § 592.6(d), and the Registered Importer has not received written notice pursuant to paragraph (a)(3) or (a)(4) of this section. For purposes of this part, a vehicle is deemed to be released from custody if it is not located at a duly identified facility of the Registered Importer and the Registered Importer has not notified the Administrator in writing of the vehicle's location or, if written notice has been provided, if the Administrator is unable to inspect the vehicle, or if the Registered Importer has transferred title to any other person regardless of the vehicle's location; or

(f) Fails to deliver the vehicle, or cause it to be delivered, to the custody of the Bureau of Customs and Border Protection at any port of entry, for export or abandonment to the United States, and to execute all documents necessary to accomplish such purposes, if the Administrator has furnished it written notice that the vehicle has been found not to comply with all applicable Federal motor vehicle safety standards along with a demand that the vehicle be delivered for export or abandoned to the United States.

PART 594—SCHEDULE OF FEES AUTHORIZED BY 49 U.S.C. 30141

■ 16. The authority citation for part 594 continues to read as follows:

Authority: Pub. L. 100–562, 49 U.S.C. 30141; 31 U.S.C. 9701; delegation of authority at 49 CFR 1.50.

■ 17. Section 594.5 is amended as follows:

(a) By removing paragraphs (e) and (g); and

(b) By redesignating paragraph (h) as paragraph (e); and

(c) by redesignating paragraph (i) as paragraph (g) and revising it; and

(d) by revising paragraph (f).

The addition and revisions read as follows:

§ 594.5 Establishment and payment of fees.

* * * * *

(f) The Administrator will furnish each Registered Importer with a monthly invoice of the fees owed by the Registered Importer for reimbursement for bond processing costs and for the review and processing of conformity certificates and information regarding importation of motor vehicles as provided in Section 592.4 of this chapter. A person who for personal use imports a vehicle covered by a determination of the Administrator must pay the fee specified in either § 594.8(b) or (c), as appropriate, to the Registered Importer, and the invoice will also include these fees. The Registered Importer must pay the fees within 15 days of the date of the invoice.

(g) Fee payments must be by certified check, cashier's check, money order, credit card, or Electronic Funds Transfer System, made payable to the Treasurer of the United States.

18. Section 594.9 is amended by revising paragraph (a) to read as follows:

§ 594.9 Fee for reimbursement of bond processing costs.

(a) Each Registered Importer must pay a fee based upon the direct and indirect costs of processing each bond furnished to the Secretary of Homeland Security on behalf of the Administrator with respect to each vehicle for which it furnishes a certificate of conformity pursuant to § 592.6(d) of this chapter.

* * * * *

Issued on: August 9, 2004.

Jeffrey W. Runge,

Administrator.

[FR Doc. 04–18833 Filed 8–23–04; 8:45 am]

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Part III

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1980

Procedures for the Handling of Discrimination Complaints Under Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002; Final Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1980

RIN 1218 AC10

Procedures for the Handling of Discrimination Complaints Under Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: This document provides the final text of regulations governing the employee protection ("whistleblower") provisions of section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley" or "Act"), enacted on July 30, 2002. The Act generally was designed to protect investors by ensuring corporate responsibility, enhancing public disclosure, and improving the quality and transparency of financial reporting and auditing. The whistleblower provisions were intended to protect employees who report fraudulent activity that can mislead innocent investors in publicly traded companies. This rule establishes procedures and time frames for the handling of discrimination complaints under Title VIII of Sarbanes-Oxley, including procedures and time frames for employee complaints to the Occupational Safety and Health Administration ("OSHA"), investigations by OSHA, appeals of OSHA determinations to an administrative law judge ("ALJ") for a hearing *de novo*, hearings by ALJs, review of ALJ decisions by the Administrative Review Board (acting on behalf of the Secretary) and judicial review of the Secretary's final decisions.

DATES: This final rule is effective on August 24, 2004.

FOR FURTHER INFORMATION CONTACT: Thomas Marple, Director, Office of Investigative Assistance, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3603, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2199.

SUPPLEMENTARY INFORMATION:

I. Background

The Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley"), Public Law 107–204, was enacted on July 30, 2002. Title VIII of Sarbanes-Oxley is designated as the Corporate and Criminal Fraud Accountability Act of 2002. Section 806, codified at 18 U.S.C. 1514A, provides protection to employees against retaliation by companies with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l) and companies required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 780(d)), or any officer, employee, contractor, subcontractor, or agent of such companies, because the employee provided information to the employer or a Federal agency or Congress relating to alleged violations of 18 U.S.C. 1341, 1343, 1344, or 1348, or any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders. In addition, employees are protected against discrimination when they have filed, testified in, participated in, or otherwise assisted in a proceeding filed or about to be filed relating to any such violation or alleged violation. These rules establish procedures for the handling of discrimination complaints under Title VIII of Sarbanes-Oxley.

II. Summary of Statutory Procedures

The Sarbanes-Oxley whistleblower provisions provide that a covered employee may file, within 90 days of the alleged discrimination, a complaint with the Secretary of Labor ("the Secretary").[1] The statute requires the Secretary to notify the person named in the complaint and the employer of the filing of the complaint. The statute further provides that proceedings under Sarbanes-Oxley will be governed by the rules and procedures and burdens of proof of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century ("AIR21"), 49 U.S.C. 42121(b). These rules and procedures are described below in Section III.

Sarbanes-Oxley authorizes an award to a prevailing employee of make-whole relief, including reinstatement with the same seniority status that the employee would have had but for the discrimination, back pay with interest, and compensation for any special damages sustained, including litigation costs, expert witness fees and reasonable attorney's fees. *See* 18 U.S.C. 1514A(c)(2). If the Secretary has not issued a final decision within 180 days of the filing of the complaint and there is no showing that there has been delay due to the bad faith of the claimant, the claimant may bring an action at law or equity for *de novo* review in the appropriate district court of the United States, which will have jurisdiction over such action without regard to the amount in controversy.

[1] Responsibility for receiving and investigating these complaints has been delegated to the Assistant Secretary for OSHA. Secretary's Order 5–2002, 67 FR 65008 (Oct. 22, 2002). Hearings on determinations by the Assistant Secretary are conducted by the Office of Administrative Law Judges, and appeals from decisions by administrative law judges are decided by the Administrative Review Board. Secretary's Order 1–2002, 67 FR 64272 (Oct. 17, 2002).

III. Summary of Regulations and Rulemaking Proceedings

On May 28, 2003, the Occupational Safety and Health Administration published in the **Federal Register** an interim final rule promulgating rules that implemented section 806 of the Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley"), Public Law No. 107–204, 68 FR 31860–31868. In addition to promulgating the interim final rule, OSHA's notice included a request for public comment on the interim rules by July 28, 2003.

In response, seven organizations and one individual filed comments with the agency within the public comment period. Comments were received from Siemens Aktiengesellschaft ("Siemens"); Plains All American Pipeline, LP ("Plains AAP"); the American Society of Safety Engineers ("ASSE"); the Society for Human Resource Management ("SHRM"); the Human Resource Policy Association ("HRPA"); the U.S. Chamber of Commerce ("the Chamber"); the Government Accountability Project ("GAP"); and Mr. Bill Bremer, Director, Risk Manager for TMP Resource Solutions. Three organizations—Cleary, Gottlieb, Steen & Hamilton; DaimlerChrysler; and the Edison Electric Institute—filed comments that were received outside the public comment period.

OSHA has reviewed and considered the timely comments. The following discussion addresses the comments and OSHA's responses in the order of the provisions of the rule.

General Comments

SHRM and the Chamber both commented generally that Sarbanes-Oxley is different from other whistleblower laws administered by OSHA, because it involves complex matters of corporate securities laws and other financial and accountancy laws and practices. As a result, these organizations are concerned about OSHA's preparedness to undertake Sarbanes-Oxley investigations. OSHA believes that the whistleblower provisions of Sarbanes-Oxley are similar to the other 13 whistleblower statutes

that it administers in that it protects employees from adverse personnel actions taken in retaliation for their having engaged in protected activity. OSHA consequently believes that its investigators have ample experience and are well able to investigate the type of employment-related disputes that typically arise under Sarbanes-Oxley.

Both SHRM and the Chamber further commented generally that the regulatory time frames are unrealistic. The Sarbanes-Oxley regulatory time frames are either mandated by the statute or are designed to effectuate Congress's desire for an expedited administrative complaint process. OSHA believes that the time frames reasonably balance the needs of both employees and employers for timely and fair resolution of whistleblower complaints.

SHRM expressed a general concern about the broad nature of activity protected under the whistleblower provision of Sarbanes-Oxley, indicating that it might generate complaints based on actions taken in the normal course of business. For example, SHRM suggested that an employee may mistakenly view an employer's decision to dispose of certain documents in the normal course of business to be a violation of section 802 of Sarbanes-Oxley, which makes it a felony for a person to destroy evidence with the intent to obstruct justice or to fail to preserve certain audit papers of companies that issue securities. Related to this comment is SHRM's concern that section 806 of Sarbanes-Oxley requires the employer to meet a higher burden of proof than other discrimination laws, in that it requires an employer to establish by clear and convincing evidence that it would have taken the unfavorable personnel action even absent the protected activity. These rules are procedural in nature and are not intended to provide interpretations of the Act. Under section 806, Congress chose to protect a broad range of disclosures about corporate practices that may adversely affect stockholders. Similarly, Congress chose to apply the "clear and convincing" burden of proof standard, which also applies under the whistleblower protection provisions of the Energy Reorganization Act ("ERA"), 42 U.S.C. 5851(b)(3)(D); AIR21, 49 U.S.C. 42121(b)(2)(B)(iv); and the Pipeline Safety Improvement Act of 2002 ("PSIA"), 49 U.S.C. 60129(b)(2)(B)(iv). OSHA also notes that SHRM's concern that innocent business behavior will become the subject of a Sarbanes-Oxley complaint is addressed by the statutory requirement that an employee "reasonably believe" that his or her disclosure is related to fraud or a violation of a Securities and Exchange Commission rule or regulation. *See* 18 U.S.C. 1514A(a)(1). The legislative history of section 806 indicates that Congress intended to apply to 18 U.S.C. 1514A(a)(1) the normal "reasonable person" standard used and interpreted in a wide variety of legal contexts. *See* 148 Cong. Rec. S7420 (daily ed. July 26, 2002) (statement of Senator Leahy). If the named person establishes that the disclosures at issue in a complaint involve activities that occur in the normal course of business, an employee's belief might not be reasonable under that standard.

The American Society of Safety Engineers commented generally that it has no specific concerns with the interim final regulations, but that it hopes that OSHA will monitor their effect in encouraging corporations to be more accountable and will be flexible and willing to make changes should the regulations prove to be inadequate. OSHA intends to monitor the effectiveness of these regulations and will make any regulatory changes in the future deemed necessary.

Mr. Bremer commented generally that the regulations should be used as an opportunity to bridge a gap between industry and OSHA. OSHA always is interested in reaching out to industry and employees to ensure effective enforcement of the laws that it administers.

GAP commented generally that several of the rules evince a bias against employees. In this regard, GAP commented that the whistleblower provisions of Sarbanes-Oxley are remedial in nature and should be broadly construed and that therefore the regulations should not operate to deny a complainant the ability to fully and fairly litigate his or her complaint. As described more fully below, OSHA believes that these regulations appropriately balance a complainant's right to fully and fairly litigate his or her complaint before the agency with both the due process rights of named persons and Congress's desire for an expedited administrative complaint process.

IV. Summary and Discussion of Regulatory Provisions

Section 1980.100 Purpose and Scope

This section describes the purpose of the regulations implementing Sarbanes-Oxley and provides an overview of the procedures covered by these new regulations. No comments were received on this section.

Section 1980.101 Definitions

In addition to the general definitions, the regulations define "company" and "company representative" to together include all entities and individuals covered by Sarbanes-Oxley. The definition of "named person" includes the employer as well as the company and company representative who the complainant alleges in the complaint to have violated the Act. Thus, the definition of "named person" will implement Sarbanes-Oxley's unique statutory provisions that identify individuals as well as the employer as potentially liable for discriminatory action. We anticipate, however, that in most cases the named person likely will be the employer.

Three comments were received regarding the definitions contained in § 1980.101. Siemens commented that the regulatory definition of "company" should exclude foreign issuers to the extent that it relates to foreign national employees who do not work in United States facilities of the foreign issuers. In support, Siemens noted that many foreign industrialized nations already have laws that protect whistleblowers, that United States labor laws already apply to Siemens's affiliated United States companies, and that labor law forms part of the national sovereignty of a foreign country. Similarly, HRPA commented that the rule should be revised so as not to apply to employees employed outside of the United States by United States corporations or their subsidiaries; nor should it apply to foreign corporations that have no United States employees. HRPA suggested that applying the rule in these situations would divert the Department's resources and therefore undermine its fundamental mission. The purpose of this rule is to provide procedures for the handling of Sarbanes-Oxley discrimination complaints; this rule is not intended to provide statutory interpretations. Because the regulatory definition of "company" simply applies the language used in the statute, OSHA does not believe any changes to the definition are necessary.

Plains AAP commented that the regulatory definitions of "employee" and "company representative" work together to broaden the statutory definition of protected employees. Specifically, Plains AAP commented that section 806(a) of the Sarbanes-Oxley Act is captioned "Whistleblower protection for employees of publicly traded companies," yet the definitions of "employee" and "company representative" in the regulations provide protection to employees of contractors and subcontractors of publicly traded companies. OSHA believes that the definitions in this section accurately reflect the statutory

language. Notwithstanding its caption, section 806(a) expressly provides that no publicly traded company, "or any officer, employee, contractor, subcontractor, or agent of such company, may discharge, demote, suspend, threaten, harass, or in any other manner discriminate against an employee. * * *" The statute thus protects the employees of publicly traded companies as well as the employees of contractors, subcontractors, and agents of those publicly traded companies. Accordingly, OSHA does not believe that its regulatory definitions broaden the class of employees that are protected under the plain language of Sarbanes-Oxley.

Section 1980.102 Obligations and Prohibited Acts

This section describes the whistleblower activity which is protected under the Act and the type of conduct which is prohibited in response to any protected activity. Complaints to an individual member of Congress are protected, even if such member is not conducting an ongoing Committee investigation within the jurisdiction of a particular Congressional committee, provided that the complaint relates to conduct that the employee reasonably believes to be a violation of one of the enumerated laws or regulations.

Although no comments were received with regard to this section's description of adverse action under Sarbanes-Oxley, OSHA has modified § 1980.102(b) to eliminate language deemed redundant with that in § 1980.102(a). In this regard, unlike other whistleblower statutes administered by OSHA, Sarbanes-Oxley specifically describes the types of adverse actions prohibited under the Act. Because this statutory description appears in § 1980.102(a), § 1980.102(b) no longer lists actions deemed actionable under the Act.

HRPA commented that this section should be clarified to ensure that the description of protected activity covers only disclosures of fraud that harm shareholders or that relate to securities law. HRPA expressed concern that under this section's description of protected activity, employees might be able to bring claims based on ordinary business and employment disputes that the statute was not intended to address. HRPA suggested, therefore, that this section provide that to be protected, a reported violation must affect as much as 3% of a company's revenue before it is considered an issue that would implicate the securities laws. Finally, HRPA also suggested that this section delineate between the protected activity covered by Sarbanes-Oxley and that covered under some of the more expansive state whistleblower protection statutes.

The description of protected activity in this section comes from the statute. As stated above, the purpose of these regulations is to provide procedural rules for the handling of whistleblower complaints and not to interpret the statute. Furthermore, determinations as to whether employee disclosures concerning alleged corporate fraud are protected under Sarbanes-Oxley will depend on the specific facts of each case. It is not appropriate therefore for these regulations to specify a percentage or formula for use in defining protected activity. With regard to HRPA's final comment on this section, because these rules are procedural in nature and the description of protected activity comes from the statute, a delineation between what is protected under Sarbanes-Oxley and what is protected under other laws not administered by OSHA is neither necessary nor appropriate.

Section 1980.103 Filing of Discrimination Complaint

This section explains the requirements for filing a discrimination complaint under Sarbanes-Oxley. To be timely, a complaint must be filed within 90 days of when the alleged violation occurs. Under *Delaware State College* v. *Ricks*, 449 U.S. 250, 258 (1980), this is considered to be when the discriminatory decision has been both made and communicated to the complainant. In other words, the limitations period commences once the employee is aware or reasonably should be aware of the employer's decision. *See Equal Employment Opportunity Commission* v. *United Parcel Service*, 249 F.3d 557, 561–62 (6th Cir. 2001). Complaints filed under the Act must be made in writing, but do not need to be made in any particular form. With the consent of the employee, complaints may be made by any person on the employee's behalf.

Both SHRM and HRPA commented that this section should require complaints to allege wrongdoing under Sarbanes-Oxley with greater specificity. To ensure that an employee's belief that a reported violation is reasonable, HRPA also suggested that this section require that complaints contain detailed analyses of the securities laws at issue and of how they were violated, and added that OSHA should not conduct investigations if the employer demonstrates by clear and convincing evidence that the employee's belief was not reasonable. It is OSHA's view that these concerns are adequately dealt with in § 1980.104 herein, the section covering investigations. As set forth at § 1980.104(b)(2), and as directed by statute, OSHA will not investigate where a complainant has failed to make a *prima facie* showing that the protected behavior was a contributing factor in the unfavorable personnel action alleged. To make a *prima facie* showing, the complainant must allege that he or she engaged in protected activity. *See* § 1980.104(b)(1)(i). Activity under Sarbanes-Oxley is only protected if the employee provides information that he or she "reasonably believes" constitutes a violation of 18 U.S.C. 1341, 1343, 1344, or 1348, any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders. OSHA believes that it would be overly restrictive to require a complaint to include detailed analyses when the purpose of the complaint is to trigger an investigation to determine whether evidence of discrimination exists. To the extent that SHRM and HRPA are suggesting that a complaint on its face must make a *prima facie* showing to avoid dismissal, OSHA has consistently believed that supplementation of the complaint by interviews with the complainant may be necessary and is appropriate. Although the Sarbanes-Oxley complainant often is highly educated, not all employees have the sophistication or legal expertise to specifically aver the elements of a *prima facie* case and/or supply evidence in support thereof. The regulations thus recognize that supplemental interviews may become part of a complaint. *See* §§ 1980.104(b)(1) and (2).

Section 1980.104 Investigation

Sarbanes-Oxley follows the AIR21 requirement that a complaint will be dismissed if it fails to make a *prima facie* showing that protected behavior or conduct was a contributing factor in the unfavorable personnel action alleged in the complaint. Also included in this section is the AIR21 requirement that an investigation of the complaint will not be conducted if the named person demonstrates by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of the complainant's protected behavior or conduct, notwithstanding the *prima facie* showing of the complainant. Upon receipt of a complaint in the investigating office, the Assistant Secretary notifies the named person of these requirements and the right of each named person to seek attorney's fees from an ALJ or the Board if the named

person alleges that the complaint was frivolous or brought in bad faith.

Under this section, the named person has the opportunity within 20 days of receipt of the complaint to meet with representatives of OSHA and present evidence in support of its position. If, upon investigation, OSHA has reasonable cause to believe that the named person has violated the Act and therefore that preliminary relief for the complainant is warranted, OSHA again contacts the named person with notice of this determination and provides the substance of the relevant evidence upon which that determination is based, consistent with the requirements of confidentiality of informants. The named person is afforded the opportunity, within 10 business days, to provide written evidence in response to the allegation of the violation, meet with the investigators, and present legal and factual arguments why preliminary relief is not warranted. This section provides due process procedures in accordance with the Supreme Court decision under STAA in *Brock* v. *Roadway Express, Inc.*, 481 U.S. 252 (1987).

Both SHRM and the Chamber commented that OSHA's pressure to complete its investigation within 60 days (*see* § 1980.105(a)) will frustrate early settlement attempts. Accordingly, they suggested that this rule provide that settlement negotiations between the complainant and the named person temporarily curtail the running of the 180-day period in which a complainant may elect to go to Federal court under 18 U.S.C. 1514A(b)(1)(B). OSHA does not believe that the statute authorizes such a rule.

Moreover, it is OSHA's view that early settlements are facilitated by the provision that permits a complainant to file a *de novo* action in Federal court 180 days after the filing of his or her administrative complaint, because it provides an incentive for the employer to resolve quickly meritorious allegations. Of course, there is nothing to prevent the complainant from agreeing to delay a filing in Federal court pending the outcome of settlement negotiations.

Plains AAP commented that because the regulations protect employees of contractors and subcontractors of a publicly traded company, and because under § 1980.104(b), a complainant can make a *prima facie* showing of a violation without alleging that the named person was involved in the adverse action, public companies will become involved in whistleblower disputes stemming from the employment decisions of contractors over which the company had no control. To avoid this perceived problem, Plains AAP suggested that § 1980.104(b)(iii) be revised to read: "The employee suffered an unfavorable personnel action for which the named person was responsible or in which the named person participated." Plains AAP commented that this revision would provide OSHA with clear grounds to dismiss a case against a person who is only being named for its nuisance value. OSHA does not believe that the suggested revision is necessary or warranted. Sarbanes-Oxley's whistleblower provision is similar to other whistleblower provisions administered by the Secretary. Under those provisions, the ARB has held that a respondent may be liable for its contractor's or subcontractor's adverse action against an employee in situations where the respondent acted as an employer with regard to the employee of the contractor or subcontractor, whether by exercising control of the work product or by establishing, modifying, or interfering with the terms, conditions, or privileges of employment. *See, e.g., Stephenson* v. *NASA*, ARB No. 96–080, 1997 WL 166055 *2 (DOL Adm. Rev. Bd. Apr. 7, 1997). Conversely, a respondent will not be liable for the adverse action taken against an employee of its contractor or subcontractor where the respondent did not act as an employer with regard to the employee. Furthermore, the statute and this rule provide safeguards to prevent a complainant's bringing a complaint against a named person simply for its nuisance value. Specifically, a named person may seek from the ALJ or the Board an award of reasonable attorney's fees up to $1,000 for a complaint determined to be frivolous or brought in bad faith. *See* 18 U.S.C. 1514A(b)(2)(A); 29 CFR 1980.109(b); 1980.110(e).

GAP commented that the regulations are biased in favor of the "named party" because they provide that the "named party" may meet with OSHA and challenge its findings, but do not have similar provisions for the complainant. Specifically, GAP commented that the only opportunity for the complainant to meet with OSHA lies in the discretion of the OSHA investigators. GAP suggested that in every instance that this section provides that the named party may meet with OSHA, it should also provide that the complainant may meet with OSHA. OSHA believes that such a revision is unnecessary. The regulations are drafted to provide named persons with the due process rights to which they are entitled under the Supreme Court's decision in *Brock* v. *Roadway Express, Inc.* Moreover, the language of Sarbanes-Oxley, which is similar to that of other whistleblower laws administered by OSHA, makes clear that OSHA's initial investigation is to be conducted independently for the purposes of establishing the facts and facilitating an early resolution of the claim. In the conduct of such an independent investigation, complainants are given ample opportunity to meet with OSHA concerning the merits of their complaints.

GAP also commented that § 1980.104(b)(2) should include specific language explaining the burden under the "contributing factor" test. Specifically, GAP suggested that, based on the definition of "contributing factor" in the legislative history of the Whistleblower Procedure Act, 5 U.S.C. 2302(b), the first and second sentences of § 1980.104(b)(2) be revised to begin with the following language: "Contributing factor means 'any factor, which alone or in connection with other factors, tends to affect in any way the outcome of the decision.' " OSHA does not believe that this revision is necessary. The "contributing factor" language used in this section is identical to that used in the employee protection provisions of the ERA and AIR21, under which there is sufficient case law interpreting the phrase. For example, in *Kester* v. *Carolina Power & Light Co.*, No. 02–007, 2003 WL 22312696, * 8 (Adm. Rev. Bd. Sept. 30, 2003), the ARB noted:

> [P]rior to the 1992 amendments, the ERA complainant was required to prove that protected activity was a "motivating factor" in the employer's decision. Congress adopted the less onerous "contributing factor" standard "in order to facilitate relief for employees who have been retaliated against for exercising their [whistleblower rights]." 138 Cong. Rec. No. 142 (Oct. 5, 1992). Congress may have been recalling that in 1989 it enacted the Whistleblower Protection Act, Public Law 101–12, section 3(a)(13), 103 Stat. 29. The WPA requires a complainant to prove that a protected disclosure was a "contributing factor in the personnel action * * *" 5 U.S.C. 1221(e)(1) (West 1996).

See also Stone & Webster Eng'g Corp. v. *Herman*, 115 F.3d 1568, 1573 (1997) (construing the "contributing factor" provision in the ERA).

GAP also commented that § 1980.104(b)(2) should explicitly reaffirm that the "contributing factor" standard is met when an alleged adverse action is taken after protected activity, but before a new performance appraisal is made. It is OSHA's view that what must be pled and proven to establish

discrimination or retaliation under section 806 of Sarbanes-Oxley will depend upon the facts and circumstances of each individual case. Accordingly, it would not be appropriate to specify in a regulation those facts that will automatically establish a *prima facie* case of discrimination.

GAP further commented that to ensure that OSHA investigators only consider the valid reasons proffered by named persons in defense of their adverse employment actions, § 1980.104(c) should be revised to include the word "legitimately," with an explanation in the preamble as to what defenses will be considered legitimate and what defenses will not be so considered. Again, OSHA does not believe that such a revision is warranted. Its investigators have vast experience conducting fair and impartial investigations of whistleblower complaints. In evaluating the merits of a complaint, investigators only consider explanations for any adverse action taken by a named person that they consider to be non-discriminatory and credible. Moreover, for the same reasons that it is inappropriate to specify facts that will or will not constitute protected activity for purposes of a complainant's *prima facie* showing, it is inappropriate to specify facts that will or will not constitute a defense for adverse action.

GAP also commented that to foster an appearance of fairness, § 1980.104(c), in addition to stating that the named person has a right to seek attorney's fees for a frivolous complaint, should refer to the complainant's right to obtain attorney's fees should he or she prevail before OSHA. The complainant's right to obtain make-whole relief, including the right to recover attorney's fees, is fully described in other parts of this rule; therefore, no revision is necessary.

SHRM commented that under § 1980.104(c), the named person is given too short a period, *i.e.*, 20 days, in which to respond to OSHA after receiving notice of the complaint. According to SHRM, the 20-day period does not allow sufficient time for the named person to conduct an internal investigation and to request and prepare for a meeting with OSHA. The statute provides only 60 days for OSHA to complete the entire investigation and issue findings. Accordingly, OSHA believes that 20 days provides sufficient time for the named person to research and prepare a response, without impeding the agency's ability to complete the investigation in a timely manner. Moreover, the 20-day period is consistent with that provided under OSHA's regulations for the handling of complaints under the Surface Transportation Assistance Act ("STAA") and AIR21, the other whistleblower statutes administered by OSHA that have 60-day investigation time frames. *See* 29 CFR 1978.103(b); 29 CFR 1979.104(c).

Regarding § 1980.104(e), GAP objected to allowing the named person 10 business days in which to respond to the due process letter because it delays OSHA's ordering temporary relief to the complainant. GAP also believed that to be fair, the complainant should be given another opportunity to rebut the named person's response to the letter. In contrast, SHRM commented that 10 business days is too short a time in which to expect a named person to prepare an adequate legal response to OSHA's reasonable cause determination and that the regulation should allow for great flexibility. As noted above, OSHA's investigations are conducted independently and under tight time frames, prior to the administrative hearing phase of the process, in which all parties participate fully. The purpose of § 1980.104(e) is to ensure compliance with the Supreme Court's ruling in *Brock* v. *Roadway Express, Inc.*, in which the Court, on a constitutional challenge to the temporary reinstatement provision in the employee protection provisions of STAA, upheld the facial constitutionality of the statute and the procedures adopted by OSHA under the Due Process Clause of the Fifth Amendment, but ruled that the record failed to show that OSHA investigators had informed Roadway of the substance of the evidence to support reinstatement of the discharged employee. OSHA believes that this purpose is met by § 1980.104(e) as currently written and that no changes are necessary.

Section 1980.105 Issuance of Findings and Preliminary Orders

This section provides that, on the basis of information obtained in the investigation, the Assistant Secretary will issue, within 60 days of the filing of a complaint, a finding regarding whether or not there is reasonable cause to believe that the complaint has merit. If the finding is that there is reasonable cause to believe that the complaint has merit, the Assistant Secretary will order appropriate preliminary relief. The letter accompanying the findings and order advises the parties of their right to file objections to the findings of the Assistant Secretary and to request a hearing, and of the right of the named person to request attorney's fees from the ALJ, regardless of whether the named person has filed objections, if the named person alleges that the complaint was frivolous or brought in bad faith. If no objections are filed within 30 days of receipt of the findings, the findings and any preliminary order of the Assistant Secretary become the final findings and order of the Secretary. If objections are timely filed, any order of preliminary reinstatement will take effect, but the remaining provisions of the order will not take effect until administrative proceedings are completed.

Where the named person establishes that the complainant would have been discharged even absent the protected activity, there would be no reasonable cause to believe that a violation has occurred. Therefore, a preliminary reinstatement order would not be issued. Furthermore, as under AIR21, a preliminary order of reinstatement would not be an appropriate remedy where, for example, the named person establishes that the complainant is, or has become, a security risk based upon information obtained after the complainant's discharge in violation of Sarbanes-Oxley. *See McKennon* v. *Nashville Banner Publishing Co.*, 513 U.S. 352, 360–62 (1995) (reinstatement would not be an appropriate remedy for discrimination under the Age Discrimination in Employment Act where, based upon after-acquired evidence, the employer would have terminated the employee upon lawful grounds). Finally, in appropriate circumstances, in lieu of preliminary reinstatement, OSHA may order that the complainant receive the same pay and benefits that he received prior to his termination, but not actually return to work. Such "economic reinstatement" frequently is employed in cases arising under section 105(c) of the Federal Mine Safety and Health Act of 1977. *See, e.g., Secretary of Labor on behalf of York* v. *BR&D Enters., Inc.*, 23 FMSHRC 697, 2001 WL 1806020 **1 (June 26, 2001).

Comments on this section were received from SHRM, the Chamber, and GAP. Both SHRM and the Chamber commented that the regulatory exceptions to preliminary reinstatement should be broadened. They further commented that preliminary reinstatement should become effective only after the administrative adjudication has been completed, to which SHRM added that preliminary reinstatement is unnecessary because Sarbanes-Oxley's make-whole remedies are sufficient to protect whistleblowers. The statute, however, explicitly provides that a preliminary order of reinstatement shall be issued upon the conclusion of an investigation that determines that there is reasonable

cause to believe that a violation has occurred. *See* 18 U.S.C. 1514A(b), adopting 49 U.S.C. 42121(b)(2). Moreover, the purpose of interim relief, to provide a meritorious complainant with a speedy remedy and avoid a chill on whistleblowing activity, would be frustrated if reinstatement did not become effective until after the administrative adjudication was completed. The named person's due process rights will have been fully satisfied under § 1980.104(e). That section provides that the named person will be notified of the substance of the evidence OSHA has gathered against it establishing reasonable cause to believe that a violation has occurred and gives the named person an opportunity to respond.

The Chamber objected to the use of the "security risk" language in the regulations because it is not defined. In this regard, the Chamber noted that a security risk could mean security of trade secrets or security of persons or property. Thus, the Chamber suggested that the regulations should define more explicitly what constitutes a security risk or should allow the employer to determine whether an employee presents a security risk. The Chamber also commented that preliminary reinstatement should be limited to those situations where company disruption would be minimal and the evidence of violation is overwhelming.

GAP also objected to this section's "security risk" exception to preliminary reinstatement on several grounds. Specifically, GAP commented that there is no foundation for the exception in the statute or the APA, that the standard for what constitutes a "security risk" is vague, that the regulation gives OSHA unlimited discretion to cancel interim relief, and that it has a chilling effect by permitting after-the-fact investigations and the potential to create additional retaliation. GAP added that the "security risk" exception is unnecessary because if an employee were a genuine security risk, the employer would have had grounds for the action that it took in the first instance.

The "security risk" exception was first introduced in OSHA's final rule for the handling of whistleblower complaints under AIR21. The provision, which was adopted in response to the events of September 11, 2001, was designed to address situations where after-acquired evidence establishes that an employee's reinstatement might pose a significant safety risk to the public, notwithstanding the fact that the employee's discharge was retaliatory in violation of the Act. We have chosen to keep the "security risk" exception here in large part to make these procedural rules consistent with AIR21's procedural rules. The exception is not intended to be broadly construed. Rather, it would apply only in situations where the named person clearly establishes to the Department that the reinstatement of an employee might result in physical violence against persons or property. Accordingly, the "security risk" language in this section should not have a chilling effect on potential whistleblowers or encourage further retaliation.

Both SHRM and the Chamber commented that permitting "economic reinstatement" in lieu of actual reinstatement would require an employer to pay twice for the same position and would work an economic hardship on small businesses. They commented that the regulations should provide for the reimbursement of the costs of the "economic reinstatement" should the named person ultimately prevail in the litigation. Finally, the Chamber questioned whether the concept of "economic reinstatement" belongs in the context of a Sarbanes-Oxley case.

Congress intended that employees be temporarily reinstated to their positions if OSHA finds reasonable cause that they were discharged in violation of Sarbanes-Oxley. When a violation is found, the norm is for OSHA to order immediate reinstatement. An employer does not have a statutory right to choose economic reinstatement. Rather, economic reinstatement is designed to accommodate an employer that establishes to OSHA's satisfaction that reinstatement is inadvisable for some reason, notwithstanding the employer's retaliatory discharge of the employee. If the employer can make such a showing, actual reinstatement might be delayed until after the administrative adjudication is completed as long as the employee continues to receive his or her pay and benefits and is not otherwise disadvantaged by a delay in reinstatement. The employer, of course, need not request the option of economic reinstatement in lieu of actual reinstatement, but if it does, there is no statutory basis for allowing the employer to recover the costs of economically reinstating an employee should the employer ultimately prevail in the whistleblower adjudication.

Section 1980.106 Objections To the Findings and the Preliminary Order

To be effective, objections to the findings of the Assistant Secretary must be in writing and must be filed with the Chief Administrative Law Judge, U.S. Department of Labor, Washington, DC, within 30 days of receipt of the findings. The date of the postmark, facsimile transmittal or e-mail communication is considered the date of the filing; if the filing of objections is made in person, by hand-delivery or other means, the date of receipt is considered the date of the filing. The filing of objections is also considered a request for a hearing before an ALJ. No comments were received on this section.

Section 1980.106(b)(1) of this rule has been clarified to provide that although the portion of the preliminary order requiring reinstatement will be effective immediately upon the named person's receipt of the findings and preliminary order, regardless of any objections to the order, the named person may file a motion with the Office of Administrative Law Judges for a stay of the Assistant Secretary's preliminary order. In making this change, OSHA conforms this rule to the recently promulgated interim final rule for the handling of whistleblower complaints under the Pipeline Safety Improvement Act of 2002 ("PSIA"). *See* 29 CFR 1981.106(b)(1). PSIA's legislative history indicates that Congress intended to assure that the mere filing of an objection would not automatically stay the preliminary order, but that an employer could file a motion for a stay. *See* 148 Cong. Rec. S11068 (Nov. 14, 2002) (section-by-section analysis). OSHA believes it would be useful for this rule to contain a similar provision. OSHA believes, however, that a stay of a preliminary reinstatement order would be appropriate only in the exceptional case. In other words, a stay only would be granted where the named person can establish the necessary criteria for equitable injunctive relief, *i.e.*, irreparable injury, likelihood of success on the merits, and a balancing of possible harms to the parties and the public.

Section 1980.107 Hearings

This section adopts the rules of practice of the Office of Administrative Law Judges at 29 CFR part 18, subpart A. In order to assist in obtaining full development of the facts in whistleblower proceedings, formal rules of evidence do not apply. The section specifically provides for consolidation of hearings if both the complainant and the named person object to the findings and/or order of the Assistant Secretary. In order for hearings to be conducted as expeditiously as possible, and particularly in light of the unique provision in Sarbanes-Oxley allowing complainants to seek a *de novo* hearing in Federal court if the Secretary has not issued a final decision within 180 days

of the filing of the complaint, this section provides that the ALJ has broad authority to limit discovery. For example, an ALJ may limit the number of interrogatories, requests for production of documents, or depositions allowed. An ALJ also may exercise discretion to limit discovery unless the complainant agrees to delay filing a complaint in Federal court for some definite period of time beyond the 180-day point. If a complainant seeks excessive or burdensome discovery or fails to adhere to an agreement to delay filing a complaint in federal court, a district court considering a request for *de novo* review might conclude that such conduct resulted in delay due to the claimant's bad faith.

GAP commented that the last sentence of § 1980.107(b), which provides ALJs with broad discretion to limit discovery to expedite hearings, should be deleted because a full and fair representation by the parties is crucial to protecting employees, discovery is a basic due process requirement, and OSHA has no justifiable interest in expediting whistleblower litigation at the expense of full and fair discovery. In this regard, GAP commented that a lack of discovery injures the complainant and not the employer, which maintains the documents and controls the access to company witnesses. GAP further commented that this section is redundant, because the ALJs already possess sufficient authority to limit discovery under 29 CFR 18.15 and the Federal Rules of Civil Procedure. Thus, GAP stated that OSHA instead should consider a regulation that formalizes Federal Rules of Civil Procedures 26(a)(1), setting forth pre-discovery disclosure requirements.

In the same vein, GAP objected to the following statement in the preamble of the interim final rule:

> An ALJ also may exercise discretion to limit discovery unless the complainant agrees to delay filing a complaint in federal court for some definite period of time beyond the 180-day point. If a complainant seeks excessive or burdensome discovery or fails to adhere to an agreement to delay filing a complaint in federal court, a district court considering a request for *de novo* review might conclude that such conduct resulted in delay due to the claimant's bad faith.

GAP commented that OSHA has no legitimate interest in attempting to preclude complainants from exercising their right to go to district court and that exercising such a right cannot be considered "bad faith."

OSHA does not believe any changes to this section are necessary. The provisions and statements to which GAP objects are merely intended by OSHA to implement Congress's command that administrative whistleblower hearings under Sarbanes-Oxley "shall be conducted expeditiously." *See* 18 U.S.C. 1514A(b)(2), incorporating 49 U.S.C. 42121(b)(2)(A). Indeed, as GAP's comments recognize, ALJs already have authority under their procedural rules at 29 CFR part 18 to limit discovery in appropriate circumstances. It is not OSHA's intent to prevent complainants from exercising their right to go to Federal court or to equate the desire to conduct reasonable discovery with bad faith. To the contrary, OSHA acknowledges that Congress essentially has adopted an alternate—administrative or Federal district court—hearing scheme. Thus, in these regulations, OSHA is attempting to modulate the wasteful consequences of potential duplicative whistleblower litigation, while implementing Congress's command for an expedited administrative whistleblower process.

Section 1980.108 Role of Federal Agencies

The ERA and STAA regulations provide two different models for agency participation in administrative proceedings. Under STAA, OSHA ordinarily prosecutes cases where a complaint has been found to be meritorious. Under ERA and the other environmental whistleblower statutes, on the other hand, OSHA does not ordinarily appear as a party in the proceeding. The Department has found that in most environmental whistleblower cases, parties have been ably represented and the public interest has not required OSHA's participation. The Department believes this is even more likely to be the situation in cases involving allegations of corporate fraud. Therefore, as in the AIR21 regulations, this provision utilizes the approach of the ERA regulation at 29 CFR 24.6(f)(1). The Assistant Secretary, at his or her discretion, may participate as a party or *amicus curiae* at any time in the administrative proceedings. For example, the Assistant Secretary may exercise his or her discretion to prosecute the case in the administrative proceeding before an administrative law judge; petition for review of a decision of an administrative law judge, including a decision based on a settlement agreement between complainant and the named person, regardless of whether the Assistant Secretary participated before the ALJ; or participate as *amicus curiae* before the ALJ or in the Administrative Review Board proceeding. Although we anticipate that ordinarily the Assistant Secretary will not participate in Sarbanes-Oxley proceedings, the Assistant Secretary may choose to do so in appropriate cases, such as cases involving important or novel legal issues, large numbers of employees, alleged violations which appear egregious, or where the interests of justice might require participation by the Assistant Secretary. The Securities and Exchange Commission, at that agency's discretion, also may participate as *amicus curiae* at any time in the proceedings. OSHA does not believe that its decision ordinarily not to prosecute meritorious Sarbanes-Oxley cases will discourage employees from making complaints about corporate fraud.

Three comments were received regarding § 1980.108(a)(1). Both SHRM and the Chamber commented that the Assistant Secretary should not ordinarily participate in any Sarbanes-Oxley whistleblower case even as *amicus* and that the Department should have no role other than to investigate, adjudicate, and enforce the orders that are issued. GAP agreed with OSHA that it should not adopt the STAA model, but rather should adopt the ERA and AIR21 approach under which OSHA participates only in appropriate cases as noted above. As the agency responsible for administering Sarbanes-Oxley whistleblower cases, OSHA believes that the Assistant Secretary must maintain and exercise his authority to participate in appropriate cases either as a party or as *amicus curiae* at any time and at any stage in the administrative proceeding. By the same token, experience under Sarbanes-Oxley and the environmental whistleblower laws does not suggest that OSHA's participation, as a routine matter, is necessary. Accordingly, in consideration of all of the comments received, OSHA has determined to leave the language of this rule as written.

Section 1980.109 Decision of the Administrative Law Judge

This section sets forth the content of the decision and order of the administrative law judge, and includes the statutory standard for finding a violation. The section further provides that the Assistant Secretary's determination as to whether to dismiss the complaint without an investigation or conduct an investigation pursuant to § 1980.104 is not subject to review by the ALJ, who hears the case on the merits.

Only one comment was received on this section. GAP commented that the word "legitimately" should be added to § 1980.109(a) to ensure that ALJs only

consider legitimate proffers from named persons in defense of their adverse action. As iterated in the discussion to GAP's similar comment regarding § 1980.104(c), OSHA does not believe that the word "legitimately" adds anything to the rule. The Department's ALJs are experienced whistleblower adjudicators; as such they only entertain credible proffers from named persons.

Section 1980.110 Decision of the Administrative Review Board

The decision of the ALJ is the final decision of the Secretary unless a timely petition for review is filed with the Administrative Review Board. Appeals to the Board are not a matter of right, but rather petitions for review are accepted at the discretion of the Board. Upon the issuance of the ALJ's decision, the parties have 10 business days within which to petition the Board for review of that decision. The parties must specifically identify the findings and conclusions to which they take exception, or the exceptions are deemed waived by the parties. The Board has 30 days to decide whether to grant the petition for review. If the Board does not grant the petition, the decision of the ALJ becomes the final decision of the Secretary. If the Board grants the petition, the Act requires the Board to issue a decision not later than 120 days after the date of the conclusion of the hearing before the ALJ. The conclusion of the hearing is deemed to be the conclusion of all proceedings before the administrative law judge—*i.e.*, 10 days after the date of the decision of the administrative law judge unless a motion for reconsideration has been filed in the interim. If a timely petition for review is filed with the Board, any relief ordered by the ALJ, except for a preliminary order of reinstatement, is inoperative while the matter is pending before the Board. This section further provides that, when the Board accepts a petition for review, its review of factual determinations will be conducted under the substantial evidence standard. This standard also is applied to Board review of ALJ decisions under the whistleblower provisions of STAA and AIR21. *See* 29 CFR 1978.109(b)(3) and 29 CFR 1979.110(b).

As with § 1980.106(b)(1), § 1980.110(b) of this rule has been changed to provide that in the exceptional case, the Board may grant a motion to stay a preliminary order of reinstatement that otherwise will be effective while review is conducted by the Board. As explained above, however, OSHA believes that a stay of a preliminary reinstatement order would only be appropriate where the named person can establish the necessary criteria for equitable injunctive relief, *i.e.*, irreparable injury, likelihood of success on the merits, and a balancing of possible harms to the parties and the public.

OSHA received only one comment on this section. GAP commented that the time frame for submitting a petition for review to the Board is unreasonably short and that it should be changed to allow a party 20 business days in which to file a petition. OSHA believes that 10 business days, which also is the time frame under AIR21 (*see* 29 CFR 1979.110(a)), is sufficient time to petition for review of an ALJ decision, particularly in light of the fact that the rule uses the date of filing to determine timeliness rather than the date of the Board's receipt of the petition.

Section 1980.111 Withdrawal of Complaints, Objections, and Findings; Settlement

This section provides for the procedures and time periods for withdrawal of complaints, the withdrawal of findings by the Assistant Secretary, and the withdrawal of objections to findings. It also provides for approval of settlements at the investigative and adjudicative stages of the case. No comments were received on this section.

Section 1980.112 Judicial Review

This section describes the statutory provisions for judicial review of decisions of the Secretary and requires, in cases where judicial review is sought, the Administrative Review Board to submit the record of proceedings to the appropriate court pursuant to the rules of such court. No comments were received on this section.

Section 1980.113 Judicial Enforcement

This section describes the Secretary's power under the statute to obtain judicial enforcement of orders and the terms of a settlement agreement. It also provides for enforcement of orders of the Secretary by the person on whose behalf the order was issued. No comments were received on this section.

Section 1980.114 District Court Jurisdiction of Discrimination Complaints

This section sets forth the Sarbanes-Oxley provision allowing complainants to bring an action in district court for *de novo* review if there has been no final decision of the Secretary within 180 days of the filing of the complaint and there is no delay due to the complainant's bad faith. It provides that complainants will provide notice 15 days in advance of their intent to file a Federal court complaint. This provision authorizing a Federal court complaint is unique among the whistleblower statutes administered by the Secretary. This statutory structure creates the possibility that a complainant will have litigated a claim before the agency, will receive a decision from an administrative law judge, and will then file a complaint in Federal court while the case is pending on review by the Board. The Act might even be interpreted to allow a complainant to bring an action in Federal court after receiving a final decision from the Board, if that decision was issued more than 180 days after the filing of the complaint. The Secretary believes that it would be a waste of the resources of the parties, the Department, and the courts for complainants to pursue duplicative litigation. The Secretary notes that the courts have recognized that, when a party has had a full and fair opportunity to litigate a claim, an adversary should be protected from the expense and vexation of multiple lawsuits and that the public interest is served by preserving judicial resources by prohibiting subsequent suits involving the same parties making the same claims. *See Montana* v. *United States*, 440 U.S. 147, 153 (1979). When an administrative agency acts in a judicial capacity and resolves disputed issues of fact properly before it that the parties have had an adequate opportunity to litigate, the courts have not hesitated to apply the principles of issue preclusion (collateral estoppel) or claim preclusion (res judicata) on the basis of that administrative decision. *See University of Tennessee* v. *Elliott*, 478 U.S. 788, 799 (1986) (citing *United States* v. *Utah Construction and Mining Co.*, 384 U.S. 394, 422 (1966)). Therefore, the Secretary anticipates that Federal courts will apply such principles if a complainant brings a new action in Federal court following extensive litigation before the Department that has resulted in a decision by an administrative law judge or the Secretary. Where an administrative hearing has been completed and a matter is pending before an administrative law judge or the Board for a decision, a Federal court also might treat a complaint as a petition for mandamus and order the Department to issue a decision under appropriate time frames.

Both SHRM and the Chamber submitted comments on this section. SHRM commented that because Sarbanes-Oxley permits a complainant to bring a *de novo* action in district

court if the Secretary has not issued a final decision within 180 days after the filing of the complaint, the regulations should specifically incorporate preclusion principles to protect employers from having to defend multiple law suits. Both SHRM and the Chamber commented that the regulations should provide that once a complainant elects to go to district court, the Department's administrative procedure should cease and further commented that a complainant's decision to end his or her administrative adjudication should be a prerequisite to going to Federal court. Finally, they commented that the regulations should provide that a decision by a complainant to go to district court after having sought either an ALJ hearing or ARB review of an ALJ decision should constitute a presumption of bad faith.

There is no statutory basis for including preclusion principles in these regulations, nor does the statute delegate authority to the Secretary to regulate litigation in the Federal district courts. *See Adams Fruit Co., Inc.* v. *Barrett*, 494 U.S. 638, 649–50 (1990). Similarly, no legislative history suggests that Congress intended to require that complainants end their administrative proceedings prior to seeking relief in Federal court. In any event, our experience to date under Sarbanes-Oxley is that complainants who choose to file in district court generally do so before the ALJ conducts the administrative hearing. Our experience also is that after the complainant files in district court, the ALJs dismiss any pending administrative hearing requests by such complainants, often in response to a complainant's motion to withdraw. Certainly, nothing in the statute or legislative history suggests that a complainant's decision to seek *de novo* relief in Federal court after requesting either an ALJ hearing on OSHA's findings or ARB review of an ALJ's decision should constitute a presumption of bad faith delay. Accordingly, OSHA does not believe that changes to this section are appropriate.

Section 1980.115 Special Circumstances; Waiver of Rules

This section provides that in circumstances not contemplated by these rules or for good cause the Secretary may, upon application and notice to the parties, waive any rule as justice or the administration of the Act requires.

GAP commented that this section should be omitted because it is ambiguous and contains no standards for application. GAP also commented that the section is redundant because 29 CFR 18.29 already provides ALJs with the necessary powers to conduct fair and impartial hearings. OSHA believes that because these procedural rules cannot cover every conceivable contingency, there may be occasions when certain exceptions to the rules are necessary. Furthermore, this section is not redundant by virtue of 29 CFR 18.29, because that regulatory provision applies only to the ALJs. Also, unlike 29 CFR 18.29, this section requires that the parties be notified at least three days before the ALJ or the Board waives any rule or issues any special order. Indeed, OSHA notes that a similar section appears in the regulations for handling complaints filed under the whistleblower provisions of STAA and AIR21 and that both the ALJs and the Board have relied upon the rule on occasion. *See, e.g., Caimano* v. *Brink's, Inc.*, No. 97–041, 1997 WL 24368 *2 (Adm. Rev. Bd. Jan. 22, 1997).

V. Paperwork Reduction Act

This rule contains a reporting requirement (§ 1980.103) which was previously reviewed and approved for use by the Office of Management and Budget ("OMB") under 29 CFR 24.3 and assigned OMB control number 1218–0236 under the provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

VI. Administrative Procedure Act

This is a rule of agency procedure and practice within the meaning of section 553 of the Administrative Procedure Act ("APA"), 5 U.S.C. 553(b)(A). Therefore, publication in the **Federal Register** of a notice of proposed rulemaking and request for comments was not required for these regulations, which provide procedures for the handling of discrimination complaints. The Assistant Secretary, however, sought and considered comments to enable the agency to improve the rules by taking into account the concerns of interested persons.

Furthermore, because this rule is procedural rather than substantive, the normal requirement of 5 U.S.C. 553(d) that a rule be effective 30 days after publication in the **Federal Register** is inapplicable. The Assistant Secretary also finds good cause to provide an immediate effective date for this rule. It is in the public interest that the rule be effective immediately so that parties may know what procedures are applicable to pending cases.

VII. Executive Order 12866; Unfunded Mandates Reform Act of 1995; Small Business Regulatory Enforcement Fairness Act of 1996; Executive Order 13132

The Department has concluded that this rule should be treated as a "significant regulatory action" within the meaning of section 3(f)(4) of Executive Order 12866 because Sarbanes-Oxley is a new program and because of the importance to investors that "whistleblowers" be protected from retaliation. E.O. 12866 requires a full economic impact analysis only for "economically significant" rules, which are defined in section 3(f)(1) as rules that may "have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities." Because the rule is procedural in nature, it is not expected to have a significant economic impact; therefore no economic impact analysis has been prepared. For the same reason, the rule does not require a section 202 statement under the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531 *et seq.*). Furthermore, because this is a rule of agency procedure or practice, it is not a "rule" within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), and does not require Congressional review. Finally, this rule does not have "federalism implications." The rule 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" and therefore is not subject to Executive Order 13132 (Federalism).

VIII. Regulatory Flexibility Analysis

The Department has determined that the regulation will not have a significant economic impact on a substantial number of small entities. The regulation simply implements procedures necessitated by enactment of Sarbanes-Oxley, in order to allow resolution of whistleblower complaints. Furthermore, no certification to this effect is required and no regulatory flexibility analysis is required because no proposed rule has been issued.

Document Preparation: This document was prepared under the direction and control of the Assistant Secretary, Occupational Safety and

Health Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 1980

Administrative practice and procedure, Corporate fraud, Employment, Investigations, Reporting and Recordkeeping requirements, Whistleblowing.

Signed in Washington, DC, this 17th day of August, 2004.

John L. Henshaw,

Assistant Secretary for Occupational Safety and Health.

■ Accordingly, for the reasons set out in the preamble part 1980 of title 29 of the Code of Federal Regulations is revised to read as follows:

PART 1980—PROCEDURES FOR THE HANDLING OF DISCRIMINATION COMPLAINTS UNDER SECTION 806 OF THE CORPORATE AND CRIMINAL FRAUD ACCOUNTABILITY ACT OF 2002, TITLE VIII OF THE SARBANES-OXLEY ACT OF 2002

Subpart A—Complaints, Investigations, Findings and Preliminary Orders

Subpart B—Litigation

Subpart C—Miscellaneous Provisions

Authority: 18 U.S.C. 1514A; Secretary of Labor's Order No. 5–2002, 67 FR 65008 (October 22, 2002).

Subpart A—Complaints, Investigations, Findings and Preliminary Orders

§ 1980.100 Purpose and scope.

(a) This part implements procedures under section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley" or "Act"), enacted into law July 30, 2002. Sarbanes-Oxley provides for employee protection from discrimination by companies and representatives of companies because the employee has engaged in protected activity pertaining to a violation or alleged violation of 18 U.S.C. 1341, 1343, 1344, or 1348, or any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders.

(b) This part establishes procedures pursuant to Sarbanes-Oxley for the expeditious handling of discrimination complaints made by employees, or by persons acting on their behalf. These rules, together with those rules codified at 29 CFR part 18, set forth the procedures for submission of complaints under Sarbanes-Oxley, investigations, issuance of findings and preliminary orders, objections to findings and orders, litigation before administrative law judges, post-hearing administrative review, and withdrawals and settlements.

§ 1980.101 Definitions.

Act means section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002, Public Law No.107–204, July 30, 2002, codified at 18 U.S.C. 1514A.

Assistant Secretary means the Assistant Secretary of Labor for Occupational Safety and Health or the person or persons to whom he or she delegates authority under the Act.

Company means any company with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l) and any company required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)).

Company representative means any officer, employee, contractor, subcontractor, or agent of a company.

Complainant means the employee who filed a complaint under the Act or on whose behalf a complaint was filed.

Employee means an individual presently or formerly working for a company or company representative, an individual applying to work for a company or company representative, or an individual whose employment could be affected by a company or company representative.

Named person means the employer and/or the company or company representative named in the complaint who is alleged to have violated the Act.

OSHA means the Occupational Safety and Health Administration of the United States Department of Labor.

Person means one or more individuals, partnerships, associations, corporations, business trusts, legal representatives or any group of persons.

Secretary means the Secretary of Labor or persons to whom authority under the Act has been delegated.

§ 1980.102 Obligations and prohibited acts.

(a) No company or company representative may discharge, demote, suspend, threaten, harass or in any other manner discriminate against any employee with respect to the employee's compensation, terms, conditions, or privileges of employment because the employee, or any person acting pursuant to the employee's request, has engaged in any of the activities specified in paragraphs (b)(1) and (2) of this section.

(b) An employee is protected against discrimination (as described in paragraph (a) of this section) by a company or company representative for any lawful act:

(1) To provide information, cause information to be provided, or otherwise assist in an investigation regarding any conduct which the employee reasonably believes constitutes a violation of 18 U.S.C. 1341, 1343, 1344, or 1348, any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders, when the information or assistance is provided to or the investigation is conducted by—

(i) A Federal regulatory or law enforcement agency;

(ii) Any Member of Congress or any committee of Congress; or

(ii) A person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct); or

(2) To file, cause to be filed, testify, participate in, or otherwise assist in a proceeding filed or about to be filed (with any knowledge of the employer) relating to an alleged violation of 18 U.S.C. 1341, 1343, 1344, or 1348, any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders.

§ 1980.103 Filing of discrimination complaint.

(a) *Who may file.* An employee who believes that he or she has been discriminated against by a company or company representative in violation of the Act may file, or have filed by any person on the employee's behalf, a complaint alleging such discrimination.

(b) *Nature of filing.* No particular form of complaint is required, except that a

complaint must be in writing and should include a full statement of the acts and omissions, with pertinent dates, which are believed to constitute the violations.

(c) *Place of filing.* The complaint should be filed with the OSHA Area Director responsible for enforcement activities in the geographical area where the employee resides or was employed, but may be filed with any OSHA officer or employee. Addresses and telephone numbers for these officials are set forth in local directories and at the following Internet address: *http://www.osha.gov.*

(d) *Time for filing.* Within 90 days after an alleged violation of the Act occurs (*i.e.*, when the discriminatory decision has been both made and communicated to the complainant), an employee who believes that he or she has been discriminated against in violation of the Act may file, or have filed by any person on the employee's behalf, a complaint alleging such discrimination. The date of the postmark, facsimile transmittal, or e-mail communication will be considered to be the date of filing; if the complaint is filed in person, by hand-delivery or other means, the complaint is filed upon receipt.

§ 1980.104 Investigation.

(a) Upon receipt of a complaint in the investigating office, the Assistant Secretary will notify the named person (or named persons) of the filing of the complaint, of the allegations contained in the complaint, and of the substance of the evidence supporting the complaint (redacted to protect the identity of any confidential informants). The Assistant Secretary also will notify the named person of its right under paragraphs (b) and (c) of this section and paragraph (e) of § 1980.110. A copy of the notice to the named person will also be provided to the Securities and Exchange Commission.

(b) A complaint of alleged violation shall be dismissed unless the complainant has made a *prima facie* showing that protected behavior or conduct was a contributing factor in the unfavorable personnel action alleged in the complaint.

(1) The complaint, supplemented as appropriate by interviews of the complainant, must allege the existence of facts and evidence to make a *prima facie* showing as follows:

(i) The employee engaged in a protected activity or conduct;

(ii) The named person knew or suspected, actually or constructively, that the employee engaged in the protected activity;

(iii) The employee suffered an unfavorable personnel action; and

(iv) The circumstances were sufficient to raise the inference that the protected activity was a contributing factor in the unfavorable action.

(2) For purposes of determining whether to investigate, the complainant will be considered to have met the required burden if the complaint on its face, supplemented as appropriate through interviews of the complainant, alleges the existence of facts and either direct or circumstantial evidence to meet the required showing, *i.e.*, to give rise to an inference that the named person knew or suspected that the employee engaged in protected activity and that the protected activity was a contributing factor in the unfavorable personnel action. Normally the burden is satisfied, for example, if the complaint shows that the adverse personnel action took place shortly after the protected activity, giving rise to the inference that it was a factor in the adverse action. If the required showing has not been made, the complainant will be so advised and the investigation will not commence.

(c) Notwithstanding a finding that a complainant has made a *prima facie* showing, as required by this section, an investigation of the complaint shall not be conducted if the named person, pursuant to the procedures provided in this paragraph, demonstrates by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of the complainant's protected behavior or conduct. Within 20 days of receipt of the notice of the filing of the complaint, the named person may submit to the Assistant Secretary a written statement and any affidavits or documents substantiating its position. Within the same 20 days, the named person may request a meeting with the Assistant Secretary to present its position.

(d) If the named person fails to demonstrate by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of the behavior protected by the Act, the Assistant Secretary will conduct an investigation. Investigations will be conducted in a manner that protects the confidentiality of any person who provides information on a confidential basis, other than the complainant, in accordance with part 70 of this title.

(e) Prior to the issuance of findings and a preliminary order as provided for in § 1980.105, if the Assistant Secretary has reasonable cause, on the basis of information gathered under the procedures of this part, to believe that the named person has violated the Act and that preliminary reinstatement is warranted, the Assistant Secretary will again contact the named person to give notice of the substance of the relevant evidence supporting the complainant's allegations as developed during the course of the investigation. This evidence includes any witness statements, which will be redacted to protect the identity of confidential informants where statements were given in confidence; if the statements cannot be redacted without revealing the identity of confidential informants, summaries of their contents will be provided. The named person will be given the opportunity to submit a written response, to meet with the investigators to present statements from witnesses in support of its position, and to present legal and factual arguments. The named person will present this evidence within 10 business days of the Assistant Secretary's notification pursuant to this paragraph, or as soon afterwards as the Assistant Secretary and the named person can agree, if the interests of justice so require.

§ 1980.105 Issuance of findings and preliminary orders.

(a) After considering all the relevant information collected during the investigation, the Assistant Secretary shall issue, within 60 days of filing of the complaint, written findings as to whether or not there is reasonable cause to believe that the named person has discriminated against the complainant in violation of the Act.

(1) If the Assistant Secretary concludes that there is reasonable cause to believe that a violation has occurred, he or she shall accompany the findings with a preliminary order providing relief to the complainant. The preliminary order shall include all relief necessary to make the employee whole, including, where appropriate: reinstatement with the same seniority status that the employee would have had but for the discrimination; back pay with interest; and compensation for any special damages sustained as a result of the discrimination, including litigation costs, expert witness fees, and reasonable attorney's fees. Where the named person establishes that the complainant is a security risk (whether or not the information is obtained after the complainant's discharge), a preliminary order of reinstatement would not be appropriate.

(2) If the Assistant Secretary concludes that a violation has not occurred, the Assistant Secretary will notify the parties of that finding.

(b) The findings and the preliminary order will be sent by certified mail, return receipt requested, to all parties of record. The letter accompanying the findings and order will inform the parties of their right to file objections and to request a hearing, and of the right of the named person to request attorney's fees from the ALJ, regardless of whether the named person has filed objections, if the named person alleges that the complaint was frivolous or brought in bad faith. The letter also will give the address of the Chief Administrative Law Judge. At the same time, the Assistant Secretary will file with the Chief Administrative Law Judge, U.S. Department of Labor, a copy of the original complaint and a copy of the findings and order.

(c) The findings and preliminary order will be effective 30 days after receipt by the named person pursuant to paragraph (b) of this section, unless an objection and a request for a hearing has been filed as provided at § 1980.106. However, the portion of any preliminary order requiring reinstatement will be effective immediately upon receipt of the findings and preliminary order.

Subpart B—Litigation

§ 1980.106 Objections to the findings and the preliminary order and request for a hearing.

(a) Any party who desires review, including judicial review, of the findings and preliminary order, or a named person alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney's fees, must file any objections and/or a request for a hearing on the record within 30 days of receipt of the findings and preliminary order pursuant to paragraph (b) of § 1980.105. The objection or request for attorney's fees and request for a hearing must be in writing and state whether the objection is to the findings, the preliminary order, and/or whether there should be an award of attorney's fees. The date of the postmark, facsimile transmittal, or e-mail communication will be considered to be the date of filing; if the objection is filed in person, by hand-delivery or other means, the objection is filed upon receipt. Objections must be filed with the Chief Administrative Law Judge, U.S. Department of Labor, Washington, DC 20001, and copies of the objections must be mailed at the same time to the other parties of record, the OSHA official who issued the findings and order, and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210.

(b)(1) If a timely objection is filed, all provisions of the preliminary order will be stayed, except for the portion requiring preliminary reinstatement, which shall not be automatically stayed. The portion of the preliminary order requiring reinstatement will be effective immediately upon the named person's receipt of the findings and preliminary order, regardless of any objections to the order. The named person may file a motion with the Office of Administrative Law Judges for a stay of the Assistant Secretary's preliminary order of reinstatement.

(2) If no timely objection is filed with respect to either the findings or the preliminary order, the findings or preliminary order, as the case may be, shall become the final decision of the Secretary, not subject to judicial review.

§ 1980.107 Hearings.

(a) Except as provided in this part, proceedings will be conducted in accordance with the rules of practice and procedure for administrative hearings before the Office of Administrative Law Judges, codified at subpart A, part 18 of title 29 of the Code of Federal Regulations.

(b) Upon receipt of an objection and request for hearing, the Chief Administrative Law Judge will promptly assign the case to a judge who will notify the parties, by certified mail, of the day, time, and place of hearing. The hearing is to commence expeditiously, except upon a showing of good cause or unless otherwise agreed to by the parties. Hearings will be conducted *de novo,* on the record. Administrative law judges have broad discretion to limit discovery in order to expedite the hearing.

(c) If both the complainant and the named person object to the findings and/or order, the objections will be consolidated and a single hearing will be conducted.

(d) Formal rules of evidence will not apply, but rules or principles designed to assure production of the most probative evidence will be applied. The administrative law judge may exclude evidence that is immaterial, irrelevant, or unduly repetitious.

§ 1980.108 Role of Federal agencies.

(a)(1) The complainant and the named person will be parties in every proceeding. At the Assistant Secretary's discretion, the Assistant Secretary may participate as a party or as *amicus curiae* at any time at any stage of the proceedings. This right to participate includes, but is not limited to, the right to petition for review of a decision of an administrative law judge, including a decision approving or rejecting a settlement agreement between the complainant and the named person.

(2) Copies of pleadings in all cases, whether or not the Assistant Secretary is participating in the proceeding, must be sent to the Assistant Secretary, Occupational Safety and Health Administration, and to the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210.

(b) The Securities and Exchange Commission may participate as *amicus curiae* at any time in the proceedings, at the Commission's discretion. At the request of the Securities and Exchange Commission, copies of all pleadings in a case must be sent to the Commission, whether or not the Commission is participating in the proceeding.

§ 1980.109 Decision and orders of the administrative law judge.

(a) The decision of the administrative law judge will contain appropriate findings, conclusions, and an order pertaining to the remedies provided in paragraph (b) of this section, as appropriate. A determination that a violation has occurred may only be made if the complainant has demonstrated that protected behavior or conduct was a contributing factor in the unfavorable personnel action alleged in the complaint. Relief may not be ordered if the named person demonstrates by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of any protected behavior. Neither the Assistant Secretary's determination to dismiss a complaint without completing an investigation pursuant to § 1980.104(b) nor the Assistant Secretary's determination to proceed with an investigation is subject to review by the administrative law judge, and a complaint may not be remanded for the completion of an investigation or for additional findings on the basis that a determination to dismiss was made in error. Rather, if there otherwise is jurisdiction, the administrative law judge will hear the case on the merits.

(b) If the administrative law judge concludes that the party charged has violated the law, the order will provide all relief necessary to make the employee whole, including reinstatement of the complainant to that person's former position with the seniority status that the complainant would have had but for the discrimination, back pay with interest, and compensation for any special damages sustained as a result of the discrimination, including litigation

costs, expert witness fees, and reasonable attorney's fees. If, upon the request of the named person, the administrative law judge determines that a complaint was frivolous or was brought in bad faith, the judge may award to the named person a reasonable attorney's fee, not exceeding $1,000.

(c) The decision will be served upon all parties to the proceeding. Any administrative law judge's decision requiring reinstatement or lifting an order of reinstatement by the Assistant Secretary will be effective immediately upon receipt of the decision by the named person, and will not be stayed. All other portions of the judge's order will be effective 10 business days after the date of the decision unless a timely petition for review has been filed with the Administrative Review Board.

§ 1980.110 Decision and orders of the Administrative Review Board.

(a) Any party desiring to seek review, including judicial review, of a decision of the administrative law judge, or a named person alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney's fees, must file a written petition for review with the Administrative Review Board ("the Board"), which has been delegated the authority to act for the Secretary and issue final decisions under this part. The decision of the administrative law judge will become the final order of the Secretary unless, pursuant to this section, a petition for review is timely filed with the Board. The petition for review must specifically identify the findings, conclusions or orders to which exception is taken. Any exception not specifically urged ordinarily will be deemed to have been waived by the parties. To be effective, a petition must be filed within 10 business days of the date of the decision of the administrative law judge. The date of the postmark, facsimile transmittal, or e-mail communication will be considered to be the date of filing; if the petition is filed in person, by hand-delivery or other means, the petition is considered filed upon receipt. The petition must be served on all parties and on the Chief Administrative Law Judge at the time it is filed with the Board. Copies of the petition for review and all briefs must be served on the Assistant Secretary, Occupational Safety and Health Administration, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210.

(b) If a timely petition for review is filed pursuant to paragraph (a) of this section, the decision of the administrative law judge will become the final order of the Secretary unless the Board, within 30 days of the filing of the petition, issues an order notifying the parties that the case has been accepted for review. If a case is accepted for review, the decision of the administrative law judge will be inoperative unless and until the Board issues an order adopting the decision, except that a preliminary order of reinstatement will be effective while review is conducted by the Board, unless the Board grants a motion to stay the order. The Board will specify the terms under which any briefs are to be filed. The Board will review the factual determinations of the administrative law judge under the substantial evidence standard.

(c) The final decision of the Board shall be issued within 120 days of the conclusion of the hearing, which will be deemed to be the conclusion of all proceedings before the administrative law judge—*i.e.*, 10 business days after the date of the decision of the administrative law judge unless a motion for reconsideration has been filed with the administrative law judge in the interim. The decision will be served upon all parties and the Chief Administrative Law Judge by mail to the last known address. The final decision will also be served on the Assistant Secretary, Occupational Safety and Health Administration, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210, even if the Assistant Secretary is not a party.

(d) If the Board concludes that the party charged has violated the law, the final order will order the party charged to provide all relief necessary to make the employee whole, including reinstatement of the complainant to that person's former position with the seniority status that the complainant would have had but for the discrimination, back pay with interest, and compensation for any special damages sustained as a result of the discrimination, including litigation costs, expert witness fees, and reasonable attorney's fees.

(e) If the Board determines that the named person has not violated the law, an order will be issued denying the complaint. If, upon the request of the named person, the Board determines that a complaint was frivolous or was brought in bad faith, the Board may award to the named person a reasonable attorney's fee, not exceeding $1,000.

Subpart C—Miscellaneous Provisions

§ 1980.111 Withdrawal of complaints, objections, and findings; settlement.

(a) At any time prior to the filing of objections to the findings or preliminary order, a complainant may withdraw his or her complaint under the Act by filing a written withdrawal with the Assistant Secretary. The Assistant Secretary will then determine whether to approve the withdrawal. The Assistant Secretary will notify the named person of the approval of any withdrawal. If the complaint is withdrawn because of settlement, the settlement will be approved in accordance with paragraph (d) of this section.

(b) The Assistant Secretary may withdraw his or her findings or a preliminary order at any time before the expiration of the 30-day objection period described in § 1980.106, provided that no objection has yet been filed, and substitute new findings or preliminary order. The date of the receipt of the substituted findings or order will begin a new 30-day objection period.

(c) At any time before the findings or order become final, a party may withdraw his or her objections to the findings or order by filing a written withdrawal with the administrative law judge or, if the case is on review, with the Board. The judge or the Board, as the case may be, will determine whether to approve the withdrawal. If the objections are withdrawn because of settlement, the settlement will be approved in accordance with paragraph (d) of this section.

(d)(1) *Investigative settlements.* At any time after the filing of a complaint, and before the findings and/or order are objected to or become a final order by operation of law, the case may be settled if the Assistant Secretary, the complainant and the named person agree to a settlement.

(2) *Adjudicatory settlements.* At any time after the filing of objections to the Assistant Secretary's findings and/or order, the case may be settled if the participating parties agree to a settlement and the settlement is approved by the administrative law judge if the case is before the judge, or by the Board if a timely petition for review has been filed with the Board. A copy of the settlement will be filed with the administrative law judge or the Board, as the case may be.

(e) Any settlement approved by the Assistant Secretary, the administrative law judge, or the Board, will constitute the final order of the Secretary and may be enforced pursuant to § 1980.113.

§ 1980.112 Judicial review.

(a) Within 60 days after the issuance of a final order by the Board (Secretary) under § 1980.110, any person adversely affected or aggrieved by the order may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of the violation. A final order of the Board is not subject to judicial review in any criminal or other civil proceeding.

(b) If a timely petition for review is filed, the record of a case, including the record of proceedings before the administrative law judge, will be transmitted by the Board to the appropriate court pursuant to the rules of the court.

§ 1980.113 Judicial enforcement.

Whenever any person has failed to comply with a preliminary order of reinstatement or a final order or the terms of a settlement agreement, the Secretary or a person on whose behalf the order was issued may file a civil action seeking enforcement of the order in the United States district court for the district in which the violation was found to have occurred.

§ 1980.114 District Court jurisdiction of discrimination complaints.

(a) If the Board has not issued a final decision within 180 days of the filing of the complaint, and there is no showing that there has been delay due to the bad faith of the complainant, the complainant may bring an action at law or equity for *de novo* review in the appropriate district court of the United States, which will have jurisdiction over such an action without regard to the amount in controversy.

(b) Fifteen days in advance of filing a complaint in federal court, a complainant must file with the administrative law judge or the Board, depending upon where the proceeding is pending, a notice of his or her intention to file such a complaint. The notice must be served upon all parties to the proceeding. If the Assistant Secretary is not a party, a copy of the notice must be served on the Assistant Secretary, Occupational Safety and Health Administration, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210.

§ 1980.115 Special circumstances; waiver of rules.

In special circumstances not contemplated by the provisions of this part, or for good cause shown, the administrative law judge or the Board on review may, upon application, after three days notice to all parties and interveners, waive any rule or issue any orders that justice or the administration of the Act requires.

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Part IV

Department of Labor

Employee Benefits Security Administration

29 CFR Parts 2509 and 2510

Electronic Registration Requirements for Investment Advisers To Be Investment Managers Under Title I of ERISA; Final Rule

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Parts 2509 and 2510

RIN 1210–AA94

Electronic Registration Requirements for Investment Advisers To Be Investment Managers Under Title I of ERISA

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Final rule.

SUMMARY: This document contains a regulation relating to the definition of investment manager in section 3(38)(B) of Title I of the Employee Retirement Income Security Act of 1974 (ERISA). Under the final regulation, in lieu of filing a copy of their state registration forms with the Secretary of Labor, state-registered investment advisers seeking to obtain or maintain investment manager status under Title I of ERISA must electronically register through the Investment Adviser Registration Depository (IARD) as an investment adviser with the state in which they maintain their principal office and place of business. The IARD is a centralized electronic filing system, established by the Securities and Exchange Commission (SEC) in conjunction with state securities authorities. The IARD enables investment advisers to satisfy SEC and state registration obligations through the use of the Internet, and current filing information in the IARD database is readily available to the Department and the general public via the Internet. The final regulation makes electronic registration through the IARD the exclusive method for state-registered investment advisers to satisfy filing requirements for investment manager status under section 3(38)(B)(ii) of Title I of ERISA. The regulation affects plan trustees, investment managers, other fiduciaries, and plan participants and beneficiaries. This document also contains conforming amendments to 29 CFR 2509.75–5 at FR–6 and FR–7, to conform them to the provisions in the final regulation.

DATES: The effective date of the changes to parts 2509 and 2510 is October 25, 2004.

FOR FURTHER INFORMATION CONTACT: Florence M. Novellino, Office of Regulations and Interpretations, Employee Benefits Security Administration, U.S. Department of Labor, Washington, DC 20210, telephone (202) 693–8518 (not a toll free number).

SUPPLEMENTARY INFORMATION:

A. Background

Under Title I of the Employee Retirement Income Security Act of 1974 (ERISA), named fiduciaries of plans may appoint investment managers to manage plan assets. If the investment manager is a registered investment adviser, bank or insurance company, and meets the other requirements for being an "investment manager" as defined in section 3(38) of ERISA, the plan trustees are relieved from certain obligations relating to the assets for which the investment manager is responsible.[1] In 1996, the National Securities Markets Improvement Act of 1996 (NSMIA), Public Law 104–290, 110 Stat. 3416, amended the Investment Advisers Act of 1940 (Advisers Act) to divide certain investment adviser regulatory responsibilities, including the registration requirements, between the Securities and Exchange Commission (SEC) and the states. Prior to 1996, most investment advisers were required to register with the SEC and in each state in which they were doing business. Paragraph (1) of section 203A(a) of the Advisers Act, as amended by NSMIA, and SEC rule at 17 CFR 275.203A–1, prohibit certain investment advisers from registering with the SEC and instead requires that they register with the states in which they maintain their principal offices and places of business.[2] The legislative history of NSMIA indicates that this division of regulatory responsibilities was intended, among other things, to encourage the SEC and state regulators to create a uniform system for "one-stop" filing that would benefit investors, reduce regulatory and paperwork burdens for registered investment advisers, and facilitate supervision of investment advisers.[3]

The SEC implemented that legislative intent at the federal level by publishing a final rule in September of 2000 at 17 CFR 275.203–1 which made electronic filing with the Investment Adviser Registration Depository (IARD) mandatory for SEC-registered advisers. Additionally, all states accept forms filed via the IARD to satisfy state registration requirements, and many mandate state registration via the IARD.[4] Accordingly, the IARD has become a "one-stop" Internet-based centralized filing system that enables investment advisers to satisfy filing obligations with both federal and state securities regulators. Pertinent state registration information in the IARD database is available on the Internet to the general public through the Investment Adviser Public Disclosure (IAPD) Web site that may be directly accessed through the SEC's Web site or through links from various state and investor Web sites. The IAPD Web site contains investment adviser registration data, including information about current registration forms, registration status, services provided, fees charged, and disclosures about certain conflicts of interest and disciplinary events, if any. The IAPD Web site includes information on investment advisers that currently are registered with the SEC or a state, and also contains information on investment advisers that were registered in the previous two years but are no longer registered.

Section 3(38)(B) of Title I of ERISA was also amended to reflect the above-described changes to the investment adviser registration requirements under the Advisers Act.[5] Specifically, section 3(38)(B) of ERISA requires that, to be an investment manager under Title I, an investment adviser must: (i) Be registered with the SEC under the Advisers Act of 1940, or (ii) if not registered under such Act by reason of paragraph (1) of section 203A(a) of such Act, be registered as an investment adviser under the laws of the state in which it maintains its principal office

[1] Section 402(c)(3) of ERISA states that a plan may provide that with respect to control or management of plan assets a named fiduciary may appoint an investment manager or managers to manage (including the power to acquire and dispose of) plan assets. Section 405(d) of ERISA provides in part that, if an investment manager or managers have been appointed under section 402(c)(3), then no trustee shall be liable for the acts or omissions of such investment manager or managers, or be under an obligation to invest or otherwise manage any asset of the plan which is subject to the management of such investment manager.

[2] Specifically, subject to certain exceptions, investment advisers fall into three categories under the NSMIA amendments. First, an investment adviser having assets under management of less than $25 million generally is prohibited from registering with the SEC but must instead register with the state regulatory authority in the state where the investment adviser maintains its principal office and place of business. Those with at least $25 million but less than $30 million may register with the SEC in lieu of filing with state authorities. Those with $30 million or more must register with the SEC. Section 203A(a) of the Advisers Act is codified at 15 U.S.C. 80b–3a(a). *See also* 17 CFR 275.203A–2 for exemptions from the prohibition for certain investment advisers registering with the SEC.

[3] S. Rep. No. 104–293, at 5 (1996).

[4] The State of Wyoming has not promulgated a state investment adviser registration requirement; therefore all Wyoming-based investment advisers are required to register under the Advisers Act with the SEC via the IARD. *See* 65 FR 57438, 57445 (Sept. 22, 2000).

[5] *See* sec. 308(b)(1) of Title III of NSMIA and Act of November 10, 1997, Sec. 1, Pub. L. 105–72, 111 Stat. 1457.

and place of business and, at the time the investment adviser last filed the registration form it most recently filed with such state in order to maintain its registration under the laws of such state, it also filed a copy of such form with the Secretary of Labor.

To implement the filing requirements in section 3(38)(B)(ii) of ERISA, the Department announced on January 14, 1998, that state-registered investment advisers seeking to qualify. or remain qualified, as investment managers must file a copy of their most recent state registration form for the state in which they maintain their principal office and place of business with the Department prior to November 10, 1998, and thereafter file with the Department copies of any subsequent filings with that state. The ongoing obligation to file copies with the Department was, however, to be temporary in nature and remain in effect until a centralized database containing the state registration forms, or substantially similar information, was available to the Department.[6]

On December 9, 2003, the Department published a notice in the **Federal Register** (68 FR 68710) seeking public comments on its proposal that would add section 2510.3–38 to Title 29 of the Code of Federal Regulations and require state-registered investment advisers seeking to obtain or maintain investment manager status under Title I of ERISA to electronically register through the IARD as an investment adviser with the state in which they maintain their principal office and place of business.

The Department received two comments regarding the proposal.[7] One comment was from an organization whose membership is comprised of securities regulators from the States (including the District of Columbia and Puerto Rico), Canada and Mexico. The second comment was submitted by a professional self-regulatory organization for financial planners. Both commenters supported the proposal and agreed that requiring state-registered investment advisers seeking investment manager status under ERISA to register electronically with IARD would provide Federal and State securities regulators as well as the public with easy access to up-to-date information regarding investment advisers. They also concluded that the regulation would not impose undue burdens on investment advisers or affect the ability of state securities regulators to oversee the registration and licensing of in-state and out-of-state investment advisers.

The Department continues to believe that the requirement to file with the Department copies of state registration filings already accessible to the Department and the general public via the IAPD Web site placed an unnecessary administrative burden on the regulated community. The requirement also results in the Department allocating resources to receive, sort, and store paper copies of information readily available in electronic form. It continues to be the Department's view that use of the IARD as a centralized electronic database would improve the ability of the Department, plan fiduciaries, and plan participants and beneficiaries to readily access registration information regarding investment advisers eligible to be investment managers of ERISA-covered plans. As noted above, not only does the SEC require electronic filing through the IARD for registration under the Advisers Act, but most states also require IARD filing for compliance with state investment adviser registration requirements. While a few states do not make electronic filing through the IARD mandatory, as noted above, all states permit investment advisers to use the IARD to satisfy registration requirements. As described more fully below, the Department believes the majority of investment managers of ERISA-covered plans already file registration forms electronically through the IARD under the Advisers Act or under applicable state securities laws. In the Department's view, the benefits to plan trustees, plan participants and beneficiaries, and the Department of this regulation outweigh the relatively small incremental cost that some investment managers may incur if they do not already register with their states through the IARD. Accordingly, the Department is adopting the final regulation without change from the proposal.

B. Summary of the Final Rule

Section 2510.3–38(a) of the final regulation describes the general filing requirement with the Secretary set forth in section 3(38)(B)(ii) applicable to state-registered investment advisers seeking to become or remain investment managers under Title I of ERISA and makes it clear that the regulation's purpose is to establish the exclusive means to satisfy that filing obligation. Section 2510.3–38(b) of the regulation provides that, for a state-registered investment adviser to satisfy the filing requirement in section 3(38)(B)(ii) of ERISA, it must electronically file the required registration information through the IARD. Section 2510.3–38(b) also provides that submitting a copy of state registration forms to the Secretary does not constitute compliance with section 3(38)(B)(ii) of ERISA. Section 2510.3–38(c) of the regulation defines the term "Investment Adviser Registration Depository" and "IARD" for purposes of the regulation as the centralized electronic depository described in 17 CFR 275.203–1. Finally, section 2510.3–38(d) of the regulation provides a cross-reference to the SEC Internet site at *www.sec.gov/iard* for information on filing investment advisor registration forms with the IARD.[8]

C. Conforming Changes to 29 CFR 2509.75–5

The amendment to section 3(38)(B) of ERISA relating to state-registered investment advisers and the final regulation resulted in a need to make certain conforming amendments to 29 CFR 2509.75–5 (Interpretive Bulletin 75–5). Specifically, Interpretive Bulletin 75–5 includes various questions and answers relating to fiduciary responsibility, including FR–6 and FR–7 relating to persons that may be eligible to be appointed as an investment manager under section 402(c)(3) of ERISA. Neither FR–6 nor FR–7 recognize that an investment adviser not registered with the SEC under the Advisers Act may still be eligible to be appointed as an investment manager if they are not registered under the Advisers Act by reason of paragraph 1 of section 203A(a) of that Act but are state-registered in accordance with ERISA section 3(38)(B). As an interpretive rule, section 2509.75–5 is

[6] Pub. L. 105–72 provided that a fiduciary shall be treated as meeting the requirement for filing a copy of the required state registration form with the Secretary if a copy of the form (or substantially similar information) is available to the Secretary from a centralized electronic or other record-keeping database. *See* Act of November 10, 1997, Sec. 1(b), Pub. L. 105–72, 111 Stat. 1457.

[7] The comments received in response to the proposed regulation are available for inspection by the public in the Department's Public Disclosure Room, 200 Constitution Avenue, NW., N–1513, Washington, DC 20210.

[8] The comment from the organization whose membership is comprised of securities regulators from the States (including the District of Columbia and Puerto Rico), Canada and Mexico also suggested that, in addition to referencing SEC's Web site at *http://www.sec.gov/iard*, the regulation should include a reference to IARD materials on its website and on NASD's information Website dedicated to the IARD. The Department modeled its website reference on the Website reference in the SEC's regulation at 17 CFR 275.203–1. Referencing multiple governmental and non-governmental websites in the regulation may lead to confusion and require the Department to monitor multiple websites and update the regulation in the event website addresses change. The Department also notes that the NASAA and NASD Websites are included as links on the SEC site that is referenced in the regulation. Accordingly, the Department decided not to adopt the suggestion to add additional websites references to the regulatory text.

not subject to notice and comment rulemaking requirements under section 553(b) of the Administrative Procedure Act, 5 U.S.C. 553(b). Therefore, the Department is publishing these changes to Interpretive Bulletin 75–5 in final form without prior publication of a notice of proposed rulemaking. Because these changes merely make the interpretive bulletin conform with the amendments to ERISA section 3(38) enacted by Public Law 105–72 and the provisions in 29 CFR 2510.3–38 being finalized in this document, the changes to FR–6 and FR–7 shall be deemed effective as of the effective date of this final rule.[9]

D. Interim Reliance

The proposed regulation provided that until the effective date of the final regulation, state-registered investment advisers seeking to obtain or maintain investment manager status under Title I of ERISA will be treated as having met the filing obligations with the Secretary of Labor described in section 3(38)(B)(ii) of ERISA for any registration filing due on or after December 9, 2003 if they satisfy the conditions of the proposed regulation. Accordingly, the Department will continue to treat investment advisers seeking to obtain or maintain investment manager status under Title I of ERISA as having met the filing obligations with the Secretary of Labor described in section 3(38)(B)(ii) of ERISA for any registration filing due before the effective date of the final regulation but on or after December 9, 2003 if they satisfied the conditions of the proposed regulation.

E. Regulatory Impact Analysis

Executive Order 12866

Under Executive Order 12866, the Department must determine whether the regulatory action is "significant" and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of the Executive Order, it has been determined that this final action is "non-significant" within the meaning of section 3(f)(4) of the Executive Order. Accordingly, it does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. Nonetheless, when the Department issued the proposed regulation on December 9, 2003, it sought public comment on an initial analysis of costs and benefits. The Department received only commentary that supported the proposal. Although no further economic analysis is required under the Executive Order, the Department has included, for information purposes only a final assessment of costs and benefits.

Summary

The Department undertook this rulemaking for the purpose of establishing a single and readily accessible source of consistent information about the registration of investment advisers that are investment managers by virtue of meeting the requirements of section 3(38)(B)(ii) of ERISA. The Department believes the regulation will benefit plan fiduciaries, investment advisers, and ultimately the participants and beneficiaries of employee benefit plans. Although the anticipated benefits of the regulation are not quantified here, they are expected to more than justify its relatively modest estimated cost.

The estimated cost of the implementation of electronic registration through the IARD for approximately 500 advisers that submitted copies of their state registrations to the Secretary of Labor, and that currently register in only those states that do not mandate IARD filing, is just under $400,000. Ongoing annual costs are estimated at $50,000. These costs will be offset by efficiency gains for plan fiduciaries and for investment advisers that wish to be appointed by plan fiduciaries. As a result of the electronic registration requirement, plan fiduciaries will be able to access a single source of registration information regardless of the size or location of the adviser, and advisers may more readily demonstrate their eligibility to be investment managers in order to gain appointments by plan fiduciaries. Over time, these investment managers may also reduce the handling of paper and the time required to complete the Form ADV, which is the joint SEC and state registration form that is also currently accepted by all the states for state registration purposes. Electronic availability of registration information will also support better and more transparent decision making with respect to the appointment of investment managers, which ultimately benefits the participants and beneficiaries of the plans involved.

Discussion

The regulation benefits plan fiduciaries that wish to appoint an investment manager pursuant to section 402(c)(3) of ERISA. Under section 405(d)(1) of ERISA, plan fiduciaries are not liable for the acts or omissions of the investment manager, and have no obligation to invest assets subject to management by the investment manager. The centralized source of readily accessible registration information offered by the IARD will help plan fiduciaries more efficiently locate information needed to determine whether advisers they may consider appointing are eligible to be an investment manager under ERISA. The source and format of information will no longer differ based on the size or principal business location of the adviser.

Uniform use of the IARD for all advisers who wish to be or remain as investment managers under ERISA will benefit these advisers as well. The change to electronic filing will not change the incentives for investment advisers to become investment managers under ERISA, but should promote increased efficiency for doing so. Advisers are not required to be an investment manager to conduct advisory activities for any customer. The Department assumes that an adviser's decision whether to meet the definition of investment manager under ERISA is based on factors unrelated to the form or format of their registration. It is therefore expected that those state-

[9] For prior periods, the Department effectively supplemented the relevant FR–6 and FR–7 provisions by, as noted above, its announcement on January 14, 1998, that a state-registered investment adviser seeking to meet the filing obligations with the Secretary of Labor described in section 3(38)(B)(ii) of ERISA must file a copy of its most recent state registration form for the state in which it maintains its principal office and place of business with the Department prior to November 10, 1998, and thereafter file with the Department copies of any subsequent filings with that state. Further, the Department provided in the proposed regulation published on December 9, 2003 that, until publication of a final rule, state-registered investment advisers seeking to obtain or maintain investment manager status under Title I of ERISA could rely on the proposed regulation to meet the filing obligations with the Secretary of Labor described in section 3(38)(B)(ii) of ERISA.

registered advisers who filed paper copies of their state registration forms with the Secretary chose to do so to gain an advantage in securing appointments by plan fiduciaries.

In any case, this regulation will not change the content of the filings for these advisers because all states accept the joint SEC and state filing form (Form ADV) for state registration, and with certain exceptions, all of the copies submitted to the Secretary were made on Form ADV.[10] Mandatory use of the IARD will, however, change the format and manner in which the information is transmitted. While the Department expects advisers to incur a cost to establish a procedure for electronic filing through the IARD plus an annual fee, the change to an electronic format and transmission method is expected to be more efficient and less costly over time. Use of the IARD will reduce the paper handling, filing, and mailing costs associated with providing copies to the state or states as well as to the Secretary, and reduce handling to obtain and reproduce signatures. The SEC cited similar efficiency gains in its regulatory impact analysis of the final rule implementing mandatory electronic filing for federally regulated advisers. Securities and Exchange Commission, Electronic Filing by Investment Advisers; Final Rule, 65 FR 57438, Sept. 22, 2000.

The regulation will directly affect only those investment advisers who wish to become or remain as investment managers under section 3(38) of ERISA, who generally have $25 million or less under management and consequently do not register with the SEC, and who register only in states that do not mandate use of the IARD to satisfy state registration requirements. Copies of registration forms submitted to the Secretary by state-registered investment advisers indicate that about 500 state-registered advisers have registered in only a non-IARD state.[11] Prior to the implementation of the IARD and many states' decisions to mandate use of the IARD to meet state investment adviser registration requirements, about 1,500 advisers provided paper copies of their state registration forms to the Secretary. Based on the data contained in those filings, about 1,000 of these already have the capability to file electronically because they are required to register in states that mandate use of the IARD. The Department therefore assumes that this regulation affects only those advisers that register solely in non-IARD states.

Under existing requirements, state-registered advisers incur a state registration filing fee with every state in which they are required to register, plus postage and handling fees for their submissions. Such fees vary by state. Most if not all of the 500 advisers affected by this regulation now register in only one state. When advisers registered only in non-IARD states register through the IARD, the appropriate state registration fee will be forwarded to the state, such that there will be no net change in state filing fees.

The Advisers Act and Form ADV allow for the requirement that states be provided registration statements. To facilitate state registration, the registrant checks the appropriate boxes on the form for each applicable state, and the IARD then distributes the required information electronically to those states. States will be unaffected because they will continue to receive existing fees, although they will be transmitted in a different manner.

These advisers would, however, newly incur the IARD initial filing fee of $150 for advisers of the size under consideration here, and an annual filing fee of $100. It is also expected that the 500 state-registered advisers will incur a cost for the set-up of the electronic filing capability, and an expenditure of time to adjust internal procedures and put existing information into an electronic format. Filing fees are expected to total $75,000 in the first year and $50,000 in each subsequent year for these advisers.

The cost of the electronic filing set-up is not known. The SEC did not quantify the cost of set-up in the final rule cited above that pertained to mandatory use of the IARD for registration with the SEC. However, for purposes of this discussion, the cost for establishment of electronic filing capability by an adviser has been estimated to be $500, which amounts to a total of $250,000 for the 500 advisers affected. This is a one-time cost based on available information on annual fees charged to SEC registrants by commercial providers of service in the industry.[12] An examination of a sample of the 500 individual filings showed that many of the advisers in question already use the software of a single provider for completing their Form ADV. Because this provider performs services to IARD filers who are currently SEC registrants as well, we have assumed that their range of services includes a method of facilitating electronic filing. It is also assumed that all advisers make use of electronic technology in the normal course of business and will not be required to make substantial technological changes as a result of this regulation.

A one-time cost is also estimated for the time required for the adviser to adjust its internal procedures to input data electronically, if necessary. A comparison of a sample of the paper filings received with IARD data indicated that these advisers had not filed electronically with IARD. However, it seems likely that many advisers already prepare the forms electronically, regardless of whether they submit them electronically. Nevertheless, to account for preparation for electronic transmission, it has been estimated that the advisers will incur the cost of two hours of a financial professional's time at $68 per hour, for a cost of $136 per adviser and a total of $68,000.

The estimated one-time cost of this regulation totals $393,000. The ongoing cost of maintaining registration information and completing and filing Form ADV is not accounted for here because the advisers prepare and file such forms to meet state registration requirements and would continue to do so without regard to this regulation. The ongoing incremental cost of this regulation is therefore $100 per adviser per year, or $50,000.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Department submitted the information collection request (ICR) included in this regulation to the Office of Management and Budget (OMB) for review and clearance at the time the Notice of Proposed Rulemaking (NPRM) was published in the **Federal Register** (December 9, 2003, 68 FR 68710). OMB approved the ICR under OMB control number 1210–0125. The approval will expire on January 31, 2007. The public is not required to respond to an information collection request unless it displays a currently valid OMB control number. Because the ICR is unchanged, no additional submission for approval is made in connection with this final rule.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as well as Executive Order 12875, this rule does not include any federal mandate that may result in

[10] Several exceptions were observed; in those cases, the adviser submitted a copy of the state's action on their registration, such as a license or approval form, rather than the registration form itself. In each case, other advisers' filings for the same state were examined to confirm that the state did accept Form ADV filings.

[11] California, Florida, Kentucky, South Carolina, and West Virginia at the time of this writing.

[12] Such fees are used here as a proxy only; the fees do not pertain specifically to electronic set-up or transmission.

expenditures by State, local, or tribal governments in the aggregate of more than $100 million, or increased expenditures by the private sector of more than $100 million.

Small Business Regulatory Enforcement Fairness Act

The rule being issued here is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and has been transmitted to Congress and the Comptroller General for review. The rule is not a "major rule" as that term is defined in 5 U.S.C. 804, because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, or federal, state, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and that are likely to have a significant economic impact on a substantial number of small entities. Unless an agency certifies that a final rule will not have a significant economic impact on a substantial number of small entities, section 604 of the RFA requires that the agency present a regulatory flexibility analysis at the time of the publication of the notice of final rulemaking describing the impact of the rule on small entities. Small entities include small businesses, organizations and governmental jurisdictions.

For purposes of analysis under the RFA, EBSA normally considers a small entity to be an employee benefit plan with fewer than 100 participants, on the basis of the definition found in section 104(a)(2) of ERISA. However, this regulation pertains to investment advisers that are prohibited from registering with the SEC pursuant to section 203(A) of the Advisers Act and SEC rules. This generally includes those advisers that have assets of less than $25 million under management. In its final rule relating to Electronic Filing by Investment Advisers (65 FR 57445, note 86), the SEC states that for purposes of the Advisers Act and the RFA, an investment adviser generally is a small entity if: (a) It manages assets of less than $25 million reported on its most recent Schedule I to Form ADV; (b) it does not have total assets of $5 million or more on the last day of the most recent fiscal year; and (c) it is not in a control relationship with another investment adviser that is not a small entity (Rule 0–7 under the Advisers Act).

Because the entities potentially affected by this rule are similar if not identical to those that fall within the SEC definition of small entity for RFA purposes, and because the regulation is expected to have a direct impact on an existing cost of doing business that investment advisers would assume without regard to the regulation, but no economic impact that would be passed on to employee benefit plans, the Department considers it appropriate in this limited circumstance to use the SEC definition for evaluating potential impacts on small entities. At the time of the proposed regulation, the Department sought comments with respect to its election to use this definition and received no comments in response to its request. Accordingly, using this definition, the Department certifies that this regulation will not have a significant economic impact on a substantial number of small entities. The factual basis for this conclusion is described below.

The SEC states that of about 20,000 investment advisers in the United States, some 12,000 do not file with them. As discussed above, approximately 500 investment advisers are expected to incur costs under this regulation. This represents 2.5 percent of the approximately 20,000 advisers doing business in the U.S., or 4 percent of the 12,000 small advisers that do not currently file with the SEC. Thus the number of advisers that will incur costs under this regulation is substantial neither in absolute terms nor as a fraction of the universe of all or of small advisers.

In addition, the economic impact of the regulation is not expected to be significant for any small entity. Seeking investment manager status for purposes of ERISA is not mandatory; small advisers presumably make efforts to meet the terms of the ERISA investment manager definition only when they compute a net benefit for doing so. The rule mandates electronic submission of small advisers' registration information, but will not change the content or other requirements for those registrations. The average cost for affected advisers is estimated to be small: about $800 in the initial year, and $100 in each following year. It is possible that some portion of this cost will be passed on to plans.

At the time of the proposed rule, EBSA requested comments on the potential impact of the proposed regulation on small entities, and on ways in which costs could be limited within the stated objectives of the proposal; no comments were received that would cause the Department to re-evaluate these impacts and costs. On this basis, the Department certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Federalism Statement

Executive Order 13132 (August 4, 1999) outlines fundamental principles of federalism and requires the adherence to specific criteria by federal agencies in the process of their formulation and implementation of policies that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This rule does not have federalism implications because it has no 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. Section 514 of ERISA provides, with certain exceptions specifically enumerated, that the provisions of Titles I and IV of ERISA supersede any and all laws of the States as they relate to any employee benefit plan covered under ERISA. Although the requirements in this rule do alter the fundamental reporting and disclosure requirements of section 3(38)(B) of ERISA with respect to state-registered investment advisers, because the duty of these state-registered advisers to report to the states exists independently of ERISA, and the rule merely prescribes that investment advisers seeking ERISA investment manager status use a specific filing method that is accepted by all states and available as a choice in all states for registration purposes, there is neither a direct implication for the States, nor is there a direct effect on the relationship or distribution of power between the national government and the States. This rule only affects those state-registered investment advisers who choose to seek investment manager status under section 3(38) of ERISA, advisers not seeking such status are unaffected by this regulation.

Statutory Authority

The final regulation and amendments to 29 CFR 2509.75–5 are adopted pursuant to the authority contained in section 505 of ERISA (Pub. L. 93–406, 88 Stat. 894; 29 U.S.C. 1135), and the Act of November 10, 1997, Sec. 1, Pub. L. 105–72, 111 Stat. 1457, and under Secretary of Labor's Order 1–2003, 68 FR 5374 (Feb. 3, 2003).

List of Subjects

29 CFR Part 2509

Employee benefit plans, Employee Retirement Income Security Act, Fiduciary responsibility, Pensions, Plan assets.

29 CFR Part 2510

Employee benefit plans, Employee Retirement Income Security Act, Pensions, Plan assets.

■ For the reasons set forth in the preamble, 29 CFR parts 2590 and 2510 are amended as follows:

PART 2509—[AMENDED]

■ 1.The authority citation for part 2509 is revised to read as follows:

Authority: 29 U.S.C. 1135; Secretary of Labor's Order 1–2003, 68 FR 5374 (Feb. 3, 2003). Secs 2509.75–10 and 2509–75–2 issued under 29 U.S.C. 1052, 1053, 1054. Sec. 2509.75–5 also issued under 29 U.S.C. 1002.

■ 2. Amend § 2509.75–5 by revising FR–6 and FR–7 to read as follows:

§ 2509.75–5 Questions and answers relating to fiduciary responsibility.

* * * * *

FR–6 Q: May an investment adviser which is neither a bank nor an insurance company, and which is neither registered under the Investment Advisers Act of 1940 nor registered as an investment adviser in the State where it maintains its principal office and place of business, be appointed an investment manager under section 402(c)(3) of the Act?

A: No. The only persons who may be appointed an investment manager under section 402(c)(3) of the Act are persons who meet the requirements of section 3(38) of the Act—namely, banks (as defined in the Investment Advisers Act of 1940), insurance companies qualified under the laws of more than one state to manage, acquire and dispose of plan assets, persons registered as investment advisers under the Investment Advisers Act of 1940, or persons not registered under the Investment Advisers Act by reason of paragraph 1 of section 203A(a) of that Act who are registered as investment advisers in the State where they maintain their principal office and place of business in accordance with ERISA section 3(38) and who have met the filing requirements of 29 CFR 2510.3–38.

FR–7 Q: May an investment adviser that has a registration application pending for federal registration under the Investment Advisers Act of 1940, or pending with the appropriate state regulatory body under State investment adviser registration laws if relying on the provisions of 29 CFR 2510.3–38 to qualify as a state-registered investment manager, function as an investment manager under the Act prior to the effective date of their federal or state registration?

A: No, for the reasons stated in the answer to FR–6 above.

* * * * *

PART 2510—[AMENDED]

■ 3.The authority citation for part 2510 is revised to read as follows:

Authority: 29 U.S.C. 1002(2), 1002(21), 1002(37), 1002(38), 1002(40), 1031, and 1135; Secretary of Labor's Order 1–2003, 68 FR 5374; Sec. 2510.3–101 also issued under sec. 102 of Reorganization Plan No. 4 of 1978, 43 FR 47713, 3 CFR, 1978 Comp., p. 332 and E.O. 12108, 44 FR 1065, 3 CFR, 1978 Comp., p. 275, and 29 U.S.C. 1135 note. Sec. 2510.3–102 also issued under sec. 102 of Reorganization Plan No. 4 of 1978, 43 FR 47713, 3 CFR, 1978 Comp., p. 332 and E.O. 12108, 44 FR 1065, 3 CFR, 1978 Comp., p. 275. Section 2510.3–38 is also issued under Sec. 1, Pub. L. 105–72, 111 Stat. 1457.

■ 4.Add § 2510.3–38 to read as follows:

§ 2510.3–38 Filing requirements for State registered investment advisers to be investment managers.

(a) *General.* Section 3(38) of the Act sets forth the criteria for a fiduciary to be an investment manager for purposes of section 405 of the Act. Subparagraph (B)(ii) of section 3(38) of the Act provides that, in the case of a fiduciary who is not registered under the Investment Advisers Act of 1940 by reason of paragraph (1) of section 203A(a) of such Act, the fiduciary must be registered as an investment adviser under the laws of the State in which it maintains its principal office and place of business, and, at the time the fiduciary files registration forms with such State to maintain the fiduciary's registration under the laws of such State, also files a copy of such forms with the Secretary of Labor. The purpose of this section is to set forth the exclusive means for investment advisers to satisfy the filing obligation with the Secretary described in subparagraph (B)(ii) of section 3(38) of the Act.

(b) *Filing Requirement.* To satisfy the filing requirement with the Secretary in section 3(38)(B)(ii) of the Act, a fiduciary must be registered as an investment adviser with the State in which it maintains its principal office and place of business and file through the Investment Adviser Registration Depository (IARD), in accordance with applicable IARD requirements, the information required to be registered and maintain the fiduciary's registration as an investment adviser in such State. Submitting to the Secretary investment adviser registration forms filed with a State does not constitute compliance with the filing requirement in section 3(38)(B)(ii) of the Act.

(c) *Definitions.* For purposes of this section, the term "Investment Adviser Registration Depository" or "IARD" means the centralized electronic depository described in 17 CFR 275.203–1.

(d) *Cross Reference.* Information for investment advisers on how to file through the IARD is available on the Securities and Exchange Commission website at *"www.sec.gov/iard."*

Signed at Washington, DC, this 16th day of August, 2004.

Ann L. Combs,

Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 04–19089 Filed 8–23–04; 8:45 am]

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Federal Register

Tuesday,
August 24, 2004

Part V

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Proposed Frameworks for Late-Season Migratory Bird Hunting Regulations; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AT53

Migratory Bird Hunting; Proposed Frameworks for Late-Season Migratory Bird Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; supplemental.

SUMMARY: The Fish and Wildlife Service (hereinafter Service or we) is proposing to establish the 2004–05 late-season hunting regulations for certain migratory game birds. We annually prescribe frameworks, or outer limits, for dates and times when hunting may occur and the number of birds that may be taken and possessed in late seasons. These frameworks are necessary to allow State selections of seasons and limits and to allow recreational harvest at levels compatible with population and habitat conditions.

DATES: You must submit comments on the proposed migratory bird hunting late-season frameworks by September 3, 2004.

ADDRESSES: Send your comments on the proposals to the Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms MBSP–4107–ARLSQ, 1849 C Street, NW., Washington, DC 20240. All comments received, including names and addresses, will become part of the public record. You may inspect comments during normal business hours at the Service's office in room 4107, Arlington Square Building, 4501 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Brian Millsap, Chief, or Ron W. Kokel, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 2004

On March 22, 2004, we published in the **Federal Register** (69 FR 13440) a proposal to amend 50 CFR part 20. The proposal provided a background and overview of the migratory bird hunting regulations process, and dealt with the establishment of seasons, limits, the proposed regulatory alternatives for the 2004–05 duck hunting season, and other regulations for migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. On June 9, 2004, we published in the **Federal Register** (69 FR 32418) a second document providing supplemental proposals for early- and late-season migratory bird hunting regulations frameworks and the regulatory alternatives for the 2004–05 duck hunting season. The June 9 supplement also provided detailed information on the 2004–05 regulatory schedule and announced the Service Migratory Bird Regulations Committee (SRC) and Flyway Council meetings.

On June 23 and 24, we held open meetings with the Flyway Council Consultants at which the participants reviewed information on the current status of migratory shore and upland game birds and developed recommendations for the 2004–05 regulations for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the Virgin Islands, special September waterfowl seasons in designated States, special sea duck seasons in the Atlantic Flyway, and extended falconry seasons. In addition, we reviewed and discussed preliminary information on the status of waterfowl as it relates to the development and selection of the regulatory packages for the 2004–05 regular waterfowl seasons. On July 21, we published in the **Federal Register** (69 FR 43694) a third document specifically dealing with the proposed frameworks for early-season regulations. In late August, we will publish a rulemaking establishing final frameworks for early-season migratory bird hunting regulations for the 2004–05 season.

On July 28–29, 2004, we held open meetings with the Flyway Council Consultants, at which the participants reviewed the status of waterfowl and developed recommendations for the 2004–05 regulations for these species. This document deals specifically with proposed frameworks for the late-season migratory bird hunting regulations. It will lead to final frameworks from which States may select season dates, shooting hours, areas, and limits.

We have considered all pertinent comments received through July 30, 2004, in developing this document. In addition, new proposals for certain late-season regulations are provided for public comment. The comment period is specified above under *DATES*. We will publish final regulatory frameworks for late-season migratory game bird hunting in the **Federal Register** on or about September 20, 2004.

Population Status and Harvest

The following paragraphs provide a brief summary of information on the status and harvest of waterfowl excerpted from various reports. For more detailed information on methodologies and results, you may obtain complete copies of the various reports at the address indicated under **ADDRESSES** or from our Web site at *http://migratorybirds.fws.gov*.

Status of Ducks

Federal, provincial, and State agencies conduct surveys each spring to estimate the size of breeding populations and to evaluate the conditions of the habitats. These surveys are conducted using fixed-wing aircraft and encompass principal breeding areas of North America, and cover over 2.0 million square miles. The Traditional survey area comprises Alaska, Canada, and the northcentral United States, and includes approximately 1.3 million square miles. The Eastern survey area includes parts of Ontario, Quebec, Labrador, Newfoundland, Nova Scotia, Prince Edward Island, New Brunswick, New York, and Maine, an area of approximately 0.7 million square miles.

Breeding Ground Conditions

Most of the U.S. and Canadian prairies were much drier in May 2004 than in May 2003, which was reflected in the pond counts for this region. For the U.S. Prairies and Canadian Prairie and Parklands combined, the May pond estimate was 3.9 ± 0.2 million, which is 24% lower than last year's ($P < 0.001$) and 19% below the long-term average ($P < 0.001$). Pond numbers in both Canada (2.5 ± 0.1 million) and the U. S. (1.4 ± 0.1 million) were below 2003 estimates (−29% in Canada and −16% in the U.S.; $P \leq 0.033$). The number of ponds in Canada was 25% below the long-term average ($P < 0.001$).

Unfortunately, last year's good water conditions on the short-grass prairies of southern Alberta and Saskatchewan did not continue in 2004, and habitat in these areas went from good last year to fair or poor this year. Habitat in southern Manitoba ranged from poor in the east to good in the west, conditions similar to last year's. In the Dakotas, a slow drying trend seen over the past few years continued, and much of eastern South Dakota was in poor condition. Conditions in the Dakotas improved to the north, and eastern Montana was a mosaic of poor to good conditions, with overall production potential rated only fair. Although prairie areas received considerable moisture from snow, including a late-spring snowstorm in southern regions, the snowmelt was absorbed by the parched ground. Furthermore, snow and cold during May probably adversely affected early nesters and young broods. Many prairie areas

received abundant water after the May surveys, but it likely did not alleviate dry conditions, because this precipitation also soaked into the ground. Therefore, overall expected production from the prairies was only poor to fair this year.

Spring thaw was exceptionally late this year in the Northwest Territories, northern Alberta, northern Saskatchewan, and northern Manitoba. This meant that birds that over-flew the prairies due to poor conditions encountered winter-like conditions in the bush, and nesting may have been curtailed. This is especially true for early-nesting species like mallards and northern pintails; late nesters should have better success. Overall, the bush regions were only fair to marginally good for production due to this late thaw. However, Alaska birds should produce well due to excellent habitat conditions there. Areas south of the Brooks Range experienced a widespread, record-setting early spring breakup, and flooding of nesting areas was minimal.

Breeding habitat conditions were generally good to excellent in the eastern U.S. and Canada. Although spring was late in most areas, it was thought nesting was not significantly affected because of abundant spring rain and mild temperatures. Production in the east was normal in Ontario and the Maritimes, and slightly below normal in Quebec.

Breeding Population Status

In the traditional survey area, the total duck population estimate (excluding scoters, eiders, long-tailed ducks, mergansers, and wood ducks) was 32.2 ± 0.6 million birds, 11% below ($P < 0.001$) last year's estimate of 36.2 ± 0.7 million birds, and 3% below the long-term (1955–2003) average ($P = 0.053$). Mallard abundance was 7.4 ± 0.3 million birds, which was similar to last year's estimate of 7.9 ± 0.3 million birds ($P = 0.177$) and the long-term average ($P = 0.762$). Blue-winged teal abundance was 4.1 ± 0.2 million birds. This value was 26% below last year's estimate of 5.5 ± 0.3 million birds ($P < 0.001$) and 10% below the long-term average ($P = 0.073$). Of the other duck species, only estimates of northern shovelers (2.8 ± 0.2 million) and American wigeon (2.0 ± 0.1 million) were significantly different from 2003 estimates ($P < 0.003$), and both were 22% below 2003 estimates. Compared to the long-term averages, gadwall (2.6 ± 0.2 million; +56%), green-winged teal (2.5 ± 0.1 million; +33%) and shovelers (+32%) were above their 1955–2003 averages ($P < 0.001$), as they were in 2003. In 2004, northern pintails (2.2 + 0.2 million; −48%) and scaup (3.8 ± 0.2 million; −27%) remained well below their long-term averages ($P < 0.001$). Wigeon also were below their long-term average in 2004 (−25%; $P < 0.001$). Estimates of redheads and canvasbacks were unchanged from their previous-year and long-term averages ($P \leq 0.396$).

The eastern survey area comprises strata 51–56 and 62–69. The 2004 total-duck estimate for this area was 3.9 ± 0.3 million birds. This estimate was similar to that of last year and the 1996–2003 average (P 0.102). Estimates for most individual species were similar to last year and to 1996–2003 averages. Only numbers of ring-necked ducks were significantly different from 2003 estimates, increasing by 67% to 0.7 ± 0.2 million birds ($P = 0.095$). Wigeon (0.1 ± 0.1 million; −61%) and goldeneye (0.4 ± 0.1 million; −42%) were below their 1996–2003 averages ($P \leq 0.052$). All other species were similar to 2003 estimates and 1996–2003 averages.

Breeding Activity and Production

Weather and habitat conditions during the summer months can influence waterfowl production. Good wetland conditions increase renesting effort and brood survival. In general, 2004 habitat conditions stabilized or improved over most of the traditional survey area between May and July. This year, we had no traditional July Production Survey to verify the early predictions of our biologists in the field. However, experienced crew leaders in Montana and the western Dakotas, the eastern Dakotas, southern Alberta, and southern Saskatchewan returned to their May survey areas in early July to qualitatively assess habitat changes between May and July. Biologists from other survey areas communicated with local biologists to get their impressions of 2004 waterfowl production and monitored weather conditions. Habitat in some portions of the prairies, particularly in the Dakotas and Alberta, improved between May and July because of abundant summer rain. However, there were few birds in these areas because many had left the prairies in the early spring when habitat conditions were dry. Therefore, the production potential from most prairie areas ranged from poor to good and was generally worse than in 2003. Pilot biologists from other survey areas communicated with local biologists to get their impressions of 2004 waterfowl production and monitored weather conditions. Habitat conditions in the northern and eastern areas are more stable because of the deeper, more permanent water bodies there. Because temperatures were so cold in May, the outlook for production from these areas remains fair in the northern Prairie Provinces, and good to excellent in the eastern survey area.

Fall Flight Estimate

The mid-continent mallard population is composed of mallards from the traditional survey area, Michigan, Minnesota, and Wisconsin, and is 8.4 ± 0.3 million. This is similar to the 2003 estimate of 8.8 ± 0.4 million ($P = 0.289$). The 2004 mid-continent mallard fall-flight index is 9.4 ± 0.1 million, statistically similar to the 2003 estimate of 10.3 ± 0.1 million birds ($P = 0.467$). These indices were based on revised mid-continent mallard population models and, therefore, differ from those previously published.

See section *1.A. Harvest Strategy Considerations* for further discussion on the implications of this information for this year's selection of the appropriate hunting regulations.

Status of Geese and Swans

We provide information on the population status and productivity of North American Canada geese (*Branta canadensis*), brant (*B. bernicla*), snow geese (*Chen caerulescens*), Ross's geese (*C. rossii*), emperor geese (*C. canagica*), white-fronted geese (*Anser albifrons*) and tundra swans (*Cygnus columbianus*). The timing of spring snowmelt in northern goose and swan nesting areas varied in 2004; from very early in western Alaska to very late in areas near Hudson Bay and in northern Quebec. Reproductive success of geese and swans in areas that experienced near-average spring phenology might have been reduced by persistent snow cover and harsh conditions that encompassed a large expanse of migration and staging habitat. Of the 26 populations for which current primary population indices were available, 7 populations (Atlantic Population, Aleutian, and 3 temperate-nesting populations of Canada geese; Pacific Population white-fronted geese; and Eastern Population tundra swans) displayed significant positive trends, and only Short Grass Prairie Population Canada geese displayed a significant negative trend over the most recent 10-year period. The forecast for production of geese and swans in North America in 2004 is improved from 2003 in the Pacific Flyway, but similar to, or lower than, 2003 for the remainder of North America.

Waterfowl Harvest and Hunter Activity

During the 2003–04 hunting season, duck harvest was about the same as the

previous year, but goose harvest increased. United States hunters harvested 13,402,000 ducks in 2003 compared to 12,740,000 in 2002, and they harvested 3,828,000 geese, an increase of 13% over the 3,378,600 geese taken in 2002. The five most commonly harvested duck species were mallard (5,019,200), green-winged teal (1,516,000), gadwall (1,473,800), wood duck (1,234,500), and blue-winged/cinnamon teal (977,600).

Review of Public Comments and Flyway Council Recommendations

The preliminary proposed rulemaking, which appeared in the March 22, 2004, **Federal Register**, opened the public comment period for migratory game bird hunting regulations. The supplemental proposed rule, which appeared in the June 9, 2004, **Federal Register**, discussed the regulatory alternatives for the 2004–05 duck hunting season. Late-season comments are summarized below and numbered in the order used in the March 22 **Federal Register** document. We have included only the numbered items pertaining to late-season issues for which we received written comments. Consequently, the issues do not follow in successive numerical or alphabetical order.

We received recommendations from all four Flyway Councils. Some recommendations supported continuation of last year's frameworks. Due to the comprehensive nature of the annual review of the frameworks performed by the Councils, support for continuation of last year's frameworks is assumed for items for which no recommendations were received. Council recommendations for changes in the frameworks are summarized below.

We seek additional information and comments on the recommendations in this supplemental proposed rule. New proposals and modifications to previously described proposals are discussed below. Wherever possible, they are discussed under headings corresponding to the numbered items in the March 22, 2004, **Federal Register** document.

1. Ducks

Categories used to discuss issues related to duck harvest management are: (A) Harvest Strategy Considerations, (B) Regulatory Alternatives, (C) Zones and Split Seasons, and (D) Special Seasons/Species Management. The categories correspond to previously published issues/discussion, and only those containing substantial recommendations are discussed below.

A. Harvest Strategy Considerations

Council Recommendations: The Atlantic, Central, and Pacific Flyway Councils and the Upper- and Lower-Regulations Committees of the Mississippi Flyway Council recommended the adoption of the "liberal" regulatory alternative, with the exception of some specific bag limits described below in section *1.D. Special Seasons/Species Management.* More specifically, recommendations concerned sections *iii. Black Ducks, iv. Canvasbacks,* and *v. Pintails.*

Service Response: The Service is continuing development of an AHM protocol that would allow hunting regulations to vary among Flyways in a manner that recognizes each Flyway's unique breeding-ground derivation of mallards. For the 2004 hunting season, we believe that the prescribed regulatory choice for the Mississippi, Central, and Pacific Flyways should continue to depend on the status of midcontinent mallards. We also recommend that the regulatory choice for the Atlantic Flyway continue to depend on the status of eastern mallards.

For the 2004 hunting season, the Service is continuing to consider the same regulatory alternatives as those used last year. The nature of the restrictive, moderate, and liberal alternatives has remained essentially unchanged since 1997, except that extended framework dates have been offered in the moderate and liberal regulatory alternatives since 2002. Also, the Service agreed last year to place a constraint on closed seasons in the western three Flyways whenever the midcontinent mallard breeding-population size (traditional survey area plus Minnesota, Michigan, and Wisconsin) is ≥5.5 million.

Optimal AHM strategies for the 2004 hunting season were calculated using: (1) Harvest-management objectives specific to each mallard stock; (2) the 2004 regulatory alternatives; and (3) current population models and associated weights for midcontinent and eastern mallards. Based on this year's survey results of 8.36 million midcontinent mallards (traditional surveys area plus Minnesota, Michigan, and Wisconsin), 2.51 million ponds in Prairie Canada, and 1.11 million eastern mallards, the prescribed regulatory choice for all four Flyways is the liberal alternative.

Therefore, we concur with the recommendations of the Atlantic, Mississippi, Central, and Pacific Flyways regarding selection of the "liberal" regulatory alternative and propose to adopt the "liberal" regulatory alternative, as described in the June 9 **Federal Register.**

D. Special Seasons/Species Management

iii. Black Ducks

Council Recommendations: The Atlantic Flyway Council recommended allowing States the opportunity to return to a 2-black-duck daily bag limit providing they close the black duck season one day for each day a 2-black-duck bag limit is employed. No offset would be required for days when the black duck bag limit was restricted to 1 bird. Both increased bag days and closed days must be consecutive, except that 1 split is allowed.

Service Response: Last fall the Service began working with the Atlantic Flyway Council and others to develop assessment procedures that could be used to better inform black duck harvest management in the United States. These procedures were intended to help the Service assess the biological implications of any proposed changes to hunting regulations, as well as complement the ongoing effort to develop an international program for the adaptive management of black duck harvests. Based on one phase of this assessment framework, historical harvest rates of black ducks generally have been consistent with the dual management objectives of maximizing sustainable harvest and attaining the North American Waterfowl Management Plan population goal for black ducks. Since 1995, however, overall harvest rates of black ducks have been higher than what seems to be optimal for meeting these management objectives. Unfortunately, not all phases of the assessment work were completed this year, mainly predicting changes in black duck harvest rates associated with proposed changes in hunting regulations. Therefore, the Service believes that it is premature to adopt any proposed changes to black duck hunting regulations without first, considering the appropriateness of departing from the traditional management objectives. And secondly, if regulatory changes are deemed appropriate, that any proposal be accompanied by an assessment to predict what changes in harvest rates would result. Additional concerns relate to the reliability of the black duck breeding ground survey data and the lack of coordination with the Mississippi Flyway or other stakeholders. Thus, we do not support the Atlantic Flyway Council's proposal and encourage the Atlantic Flyway to

complete the assessment work we requested last year.

iv. Canvasbacks

Council Recommendations: The Atlantic and Pacific Flyway Councils and the Upper- and Lower-Regulations Committees of the Mississippi Flyway Council recommended that the Service allow a "restrictive" canvasback season consisting of a 1-bird daily bag limit and a 30-day season in the Atlantic and Mississippi Flyways and 60-day season in the Pacific Flyway.

The Central Flyway Council recommended that canvasbacks be managed using the "Hunter's Choice Bag Limit" (described in the August 19, 2003, **Federal Register** (68 FR 50016)). However, until the "Hunter's Choice Bag Limit" becomes available, the Council recommends a 39-day season with a 1-bird daily bag limit, which may be split according to applicable zones/split duck hunting configurations approved for each State.

Service Response: Based on regulatory actions in recent years and recommendations from the Flyway Councils, the canvasback harvest strategy was modified this year in the July 21 **Federal Register** to allow partial seasons within the regular duck season. The modification allows a canvasback season length equal to that of the "restrictive" AHM regulatory alternative if a full season is not supported, but the reduced harvest from the restricted season predicts a spring abundance the following year equal to or greater than the objective of 500,000 birds. Otherwise, the season on canvasbacks is closed. Further, based on a recommendation from the Pacific Flyway Council, Alaska has a 1-bird daily bag limit for the entire regular duck season in all years unless the Service determines that it is in the best interest of the canvasback resource to close the season in Alaska as well as the lower 48 States.

This year's spring survey resulted in an estimate of 617,228 canvasbacks. However, the estimate of ponds in Prairie Canada was 2,512,608, which was 25% below average. The allowable harvest in the United States calculated from these numbers is 109,000, which is below the predicted U.S. harvest of 119,000 associated with the "liberal" duck season alternative. Thus, for 2004–05, a canvasback season the entire length of the regular season is not supported. However, the "restrictive" season length within the regular duck season is expected to result in a harvest of about 62,000 canvasbacks, and is supported. Thus, we propose a season length at the level of the "restrictive" AHM alternative (*i.e.*, 30 days in the Atlantic and Mississippi Flyways, 39 days in the Central Flyway, and 60 days in the Pacific Flyway) for this year. Seasons may be split according to applicable zones/split duck hunting configurations approved for each State.

v. Pintails

Council Recommendations: The Atlantic, Central, and Pacific Flyway Councils and the Upper- and Lower-Regulations Committees of the Mississippi Flyway Council recommended a "restrictive" season for pintails consisting of a 1-bird daily bag limit and a 30-day season in the Atlantic and Mississippi Flyways, a 39-day season in the Central Flyway, and a 60-day season in the Pacific Flyway.

Service Response: For the past two years, partial seasons ("restrictive" AHM alternative) have been used for pintails, which was a departure from the existing interim pintail harvest strategy. This year, the Service requested that the Flyway Councils review the existing strategy; specifically, the provision that provides for a full season with a 1-bird daily bag limit whenever the pintail population exceeds the closure threshold established in the strategy, regardless of projected population impacts. Discussions resulted in our July 21 decision to modify the existing strategy for 2004 as follows:

- Season closed when the breeding-population estimate (BPOP) is less than 1.5 million and the projected Fall Flight is less than 2.0 million.
- Partial season (restrictive alternative) when the BPOP or Fall Flight exceeds the closure level but the BPOP is less than 2.5 million and projections in the strategy predict a decline in the following year's BPOP (not including a 6% growth factor).
- Full season, minimum 1-bird daily bag limit when the BPOP exceeds 2.5 million, regardless of the following year's BPOP projection.
- All other existing provisions of the strategy continue to apply.

Based on the modified strategy, a pintail breeding-population estimate of 2.18 million and a Fall-Flight projection of 2.64 million results in a projected 20 percent decline in next year's breeding population with a full season and 1-bird daily bag limit. Therefore, we propose a season length at the level of the "restrictive" AHM alternative (*i.e.*, 30 days in the Atlantic and Mississippi Flyways, 39 days in the Central Flyway, and 60 days in the Pacific Flyway) for this year. Seasons may be split according to applicable zones/split duck hunting configurations approved for each State.

In addition, we recommend that further review of the strategy be cooperatively undertaken during the coming year prior to finalizing a pintail strategy to be used until a full incorporation of pintails into the formal AHM process is achieved.

4. Canada Geese

B. Regular Seasons

The Atlantic Flyway Council recommended that the Atlantic Population (AP) Canada goose season consist of a 45-day season with a daily bag limit of 3 geese in the New England and Mid-Atlantic Regions with an opening framework date of the fourth Saturday in October and a closing date of January 31. In the Chesapeake Region (except Back Bay, Virginia), the Council recommended a season length of 45 days, with a daily bag limit of 1 goose during the first 25 days and 2 geese during the last 20 days of the season. The framework opening date in the Chesapeake Region would be November 15 and the closing date would be January 31. The Council recommended that remaining AP harvest areas (i.e., Northeast Hunt Unit in coastal North Carolina and Back Bay, Virginia) remain closed.

The Upper- and Lower-Regulations Committees of the Mississippi Flyway Council recommended a number of changes in season length, season dates, bag limits, and quotas for Minnesota, Iowa, and Missouri in response to changes in the status of the Eastern Prairie Population (EPP) Canada goose population and in Kentucky, Tennessee, Wisconsin, Michigan, and Illinois in response to changes in the status of the Mississippi Valley Population (MVP) Canada goose population.

The Pacific Flyway Council recommended increasing the season length in Humboldt and Del Norte Counties in California from 16 days to 100 days and increasing the daily bag limit for small Canada geese from 1 to 2 per day.

Service Response: We concur with all the Council recommendations. Further, last year we encouraged the Atlantic Flyway to specify population objectives for AP geese and provide a strategy to guide future harvest management. We appreciate the Flyway's effort during this past year to provide this information.

C. Special Late Season

Council Recommendations: The Atlantic Flyway Council recommended that Connecticut's special late Canada goose season become operational.

Service Response: We concur.

5. White-fronted Geese

Council Recommendations: The Pacific Flyway Council recommended increasing the season length in the Balance-of-the-State Zone in California from 86 days to 100 days and increasing the daily bag limit for white-fronted geese from 2 to 3 per day except in the Sacramento Valley Special Management Area (west).

Service Response: We concur.

6. Brant

Council Recommendations: The Atlantic Flyway Council recommended a 50-day season with a 2-bird daily bag limit for Atlantic brant in 2004.

Service Response: We concur.

Public Comment Invited

The Department of the Interior's policy is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. We intend that adopted final rules be as responsive as possible to all concerned interests and, therefore, seek the comments and suggestions of the public, other concerned governmental agencies, nongovernmental organizations, and other private interests on these proposals. Accordingly, we invite interested persons to submit written comments, suggestions, or recommendations regarding the proposed regulations to the address indicated under **ADDRESSES**.

Special circumstances involved in the establishment of these regulations limit the amount of time that we can allow for public comment. Specifically, two considerations compress the time in which the rulemaking process must operate: (1) The need to establish final rules at a point early enough in the summer to allow affected State agencies to adjust their licensing and regulatory mechanisms; and (2) the unavailability, before mid-June, of specific, reliable data on this year's status of some waterfowl and migratory shore and upland game bird populations. Therefore, we believe that to allow comment periods past the dates specified in **DATES** is contrary to the public interest.

Before promulgation of final migratory game bird hunting regulations, we will take into consideration all comments received. Such comments, and any additional information received, may lead to final regulations that differ from these proposals. You may inspect comments received on the proposed annual regulations during normal business hours at the Service's office in room 4107, 4501 North Fairfax Drive, Arlington, Virginia. For each series of proposed rulemakings, we will establish specific comment periods. We will consider, but possibly may not respond in detail to, each comment. However, as in the past, we will summarize all comments received during the comment period and respond to them in the final rule.

NEPA Consideration

NEPA considerations are covered by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14)," filed with the Environmental Protection Agency on June 9, 1988. We published Notice of Availability in the **Federal Register** on June 16, 1988 (53 FR 22582) and our Record of Decision on August 18, 1988 (53 FR 31341). In addition, in a proposed rule published in the April 30, 2001, **Federal Register** (66 FR 21298), we expressed our intent to begin the process of developing a new EIS for the migratory bird hunting program. We plan to begin the public scoping process in the near future.

Endangered Species Act Consideration

Prior to issuance of the 2004–05 migratory game bird hunting regulations, we will consider provisions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1543; hereinafter the Act), to ensure that hunting is not likely to jeopardize the continued existence of any species designated as endangered or threatened or modify or destroy its critical habitat, and is consistent with conservation programs for those species. Consultations under Section 7 of this Act may cause us to change proposals in this and future supplemental proposed rulemaking documents.

Executive Order 12866

The migratory bird hunting regulations are economically significant and were reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. As such, a cost/benefit analysis was initially prepared in 1981. This analysis was subsequently revised annually from 1990–1996, and then updated in 1998. We have updated again this year. It is further discussed below under the heading *Regulatory Flexibility Act*. Results from the 2004 analysis indicate that the expected welfare benefit of the annual migratory bird hunting frameworks is on the order of $734 million to $1.064 billion, with a midpoint estimate of $899 million. Copies of the cost/benefit analysis are available upon request from the address indicated under **ADDRESSES** or from our Web site at *www.migratorybirds.gov*.

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite comments on how to make this rule easier to understand, including answers to questions such as the following:

(1) Are the requirements in the rule clearly stated?

(2) Does the rule contain technical language or jargon that interferes with its clarity?

(3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity?

(4) Would the rule be easier to understand if it were divided into more (but shorter) sections?

(5) Is the description of the rule in the "Supplementary Information" section of the preamble helpful in understanding the rule?

(6) What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of the Executive Secretariat and Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW., Washington, DC 20240. You may also e-mail comments to this address: *Exsec@ios.doi.gov*.

Regulatory Flexibility Act

These regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail as part of the 1981 cost-benefit analysis discussed under *Executive Order 12866*. This analysis was revised annually from 1990 through 1995. In 1995, the Service issued a Small Entity Flexibility Analysis (Analysis), which was subsequently updated in 1996, 1998, and 2004. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The 2004 Analysis was based on the 2001 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend between $481 million and $1.2 billion at small businesses in 2004. Copies of the Analysis are available upon request from the address indicated under **ADDRESSES** or from our Web site at *www.migratorybirds.gov*.

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule has an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, we do not plan to defer the effective date required by 5 U.S.C. 801 under the exemption contained in 5 U.S.C. 808(1).

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995. The various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, Subpart K, are utilized in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of the Migratory Bird Harvest Information Program and assigned clearance number 1018–0015 (expires 10/31/2004). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations. A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities. Therefore, this rule is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this proposed rule, has determined that it will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, this proposed rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, these rules allow hunters to exercise otherwise unavailable privileges and, therefore, reduce restrictions on the use of private and public property.

Government-to-Government Relationship with Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects.

Energy Effects—Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this proposed rule is a significant regulatory action under Executive Order 12866, it is not expected to adversely affect energy supplies, distribution, or use. Thus, it is not a significant energy action and no Statement of Energy Effects is required.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections regarding the hunting of migratory birds, and we employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and Tribes to determine which seasons meet their individual needs. Any State or tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 2004–05 hunting season are authorized under 16 U.S.C. 703–712 and 16 U.S.C. 742 a–j.

Dated: August 16, 2004.

David P. Smith,

Acting Assistant Secretary for Fish and Wildlife and Parks.

Proposed Regulations Frameworks for 2004–05 Late Hunting Seasons on Certain Migratory Game Birds

Pursuant to the Migratory Bird Treaty Act and delegated authorities, the Department has approved frameworks for season lengths, shooting hours, bag and possession limits, and outside dates within which States may select seasons for hunting waterfowl and coots between the dates of September 1, 2004, and March 10, 2005.

General

Dates: All outside dates noted below are inclusive.

Shooting and Hawking (taking by falconry) Hours: Unless otherwise specified, from one-half hour before sunrise to sunset daily.

Possession Limits: Unless otherwise specified, possession limits are twice the daily bag limit.

Flyways and Management Units

Waterfowl Flyways

Atlantic Flyway—includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Mississippi Flyway—includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

Central Flyway—includes Colorado (east of the Continental Divide), Kansas, Montana (Counties of Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except the Jicarilla Apache Indian Reservation), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

Pacific Flyway—includes Alaska, Arizona, California, Idaho, Nevada, Oregon, Utah, Washington, and those

portions of Colorado, Montana, New Mexico, and Wyoming not included in the Central Flyway.

Management Units

High Plains Mallard Management Unit—roughly defined as that portion of the Central Flyway that lies west of the 100th meridian.

Definitions: For the purpose of hunting regulations listed below, the collective terms "dark" and "light" geese include the following species:

Dark geese: Canada geese, white-fronted geese, brant, and all other goose species except light geese.

Light geese: snow (including blue) geese and Ross' geese.

Area, Zone, and Unit Descriptions: Geographic descriptions related to late-season regulations are contained in a later portion of this document.

Area-Specific Provisions: Frameworks for open seasons, season lengths, bag and possession limits, and other special provisions are listed below by Flyway.

Compensatory Days in the Atlantic Flyway: In the Atlantic Flyway States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Jersey, North Carolina, Pennsylvania, and Virginia, where Sunday hunting is prohibited statewide by State law, all Sundays are closed to all take of migratory waterfowl (including mergansers and coots).

Atlantic Flyway

Ducks, Mergansers, and Coots

Outside Dates: Between the Saturday nearest September 24 (September 25) and the last Sunday in January (January 30).

Hunting Seasons and Duck Limits: 60 days, except pintails and canvasbacks which may not exceed 30 days, and season splits must conform to each State's zone/split configuration for duck hunting. The daily bag limit is 6 ducks, including no more than 4 mallards (2 hens), 3 scaup, 1 black duck, 1 pintail, 1 canvasback, 1 mottled duck, 1 fulvous whistling duck, 2 wood ducks, 2 redheads, and 4 scoters. A single pintail and canvasback may also be included in the 6-bird daily bag limit for designated youth-hunt days.

Closures: The season on harlequin ducks is closed.

Sea Ducks: Within the special sea duck areas, during the regular duck season in the Atlantic Flyway, States may choose to allow the above sea duck limits in addition to the limits applying to other ducks during the regular duck season. In all other areas, sea ducks may be taken only during the regular open season for ducks and are part of the regular duck season daily bag (not to exceed 4 scoters) and possession limits.

Merganser Limits: The daily bag limit of mergansers is 5, only 1 of which may be a hooded merganser.

Coot Limits: The daily bag limit is 15 coots.

Lake Champlain Zone, New York: The waterfowl seasons, limits, and shooting hours shall be the same as those selected for the Lake Champlain Zone of Vermont.

Connecticut River Zone, Vermont: The waterfowl seasons, limits, and shooting hours shall be the same as those selected for the Inland Zone of New Hampshire.

Zoning and Split Seasons: Delaware, Florida, Georgia, Maryland, North Carolina, Rhode Island, South Carolina, and Virginia may split their seasons into three segments; Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Vermont, and West Virginia may select hunting seasons by zones and may split their seasons into two segments in each zone.

Canada Geese

Season Lengths, Outside Dates, and Limits: Specific regulations for Canada geese are shown below by State. Unless specified otherwise, seasons may be split into two segments. In areas within States where the framework closing date for Atlantic Population (AP) goose seasons overlaps with special late-season frameworks for resident geese, the framework closing date for AP goose seasons is January 14.

Connecticut: North Atlantic Population (NAP) Zone: Between October 1 and January 31, a 60-day season may be held with a 2-bird daily bag limit in the H Unit and a 70-day season with a 3-bird daily bag in the L Unit.

Atlantic Population (AP) Zone: A 45-day season may be held between the fourth Saturday in October (October 23) and January 31, with a 3-bird daily bag limit.

South Zone: A special experimental season may be held between January 15 and February 15, with a 5-bird daily bag limit.

Delaware: A 45-day season may be held between November 15 and January 31, with a 1-bird daily bag limit during the first 25 days and a 2-bird daily bag limit during the last 20 days.

Florida: A 70-day season may be held between November 15 and February 15, with a 5-bird daily bag limit.

Georgia: In specific areas, a 70-day season may be held between November 15 and February 15, with a 5-bird daily bag limit.

Maine: A 60-day season may be held Statewide between October 1 and January 31, with a 2-bird daily bag limit.

Maryland: Resident Population (RP) Zone: A 70-day season may be held between November 15 and February 15, with a 5-bird daily bag limit.

AP Zone: A 45-day season may be held between November 15 and January 31, with a 1-bird daily bag limit during the first 25 days and a 2-bird daily bag limit during the last 20 days.

Massachusetts: NAP Zone: A 60-day season may be held between October 1 and January 31, with a 2-bird daily bag limit. Additionally, a special season may be held from January 15 to February 15, with a 5-bird daily bag limit.

AP Zone: A 45-day season may be held between the fourth Saturday in October (October 23) and January 31, with a 3-bird daily bag limit.

New Hampshire: A 60-day season may be held statewide between October 1 and January 31, with a 2-bird daily bag limit.

New Jersey: Statewide: A 45-day season may be held between the fourth Saturday in October (October 23) and January 31, with a 3-bird daily bag limit.

Special Late Goose Season Area: An experimental season may be held in designated areas of North and South New Jersey from January 15 to February 15, with a 5-bird daily bag limit.

New York: Southern James Bay Population (SJBP) Zone: A 70-day season may be held between the last Saturday in October (October 30) and January 31, with a 2-bird daily bag limit.

NAP Zone: Between October 1 and January 31, a 60-day season may be held, with a 2-bird daily bag limit in the High Harvest areas; and a 70-day season may be held, with a 3-bird daily bag limit in the Low Harvest areas.

Special Late Goose Season Area: An experimental season may be held between January 15 and February 15, with a 5-bird daily bag limit in designated areas of Chemung, Delaware, Tioga, Broome, Sullivan, Westchester, Nassau, Suffolk, Orange, Dutchess, Putnam, and Rockland Counties.

AP Zone: A 45-day season may be held between the fourth Saturday in October (October 23) and January 31, with a 3-bird daily bag limit.

RP Zone: A 70-day season may be held between the last Saturday in October (October 30) and February 15, with a 5-bird daily bag limit.

North Carolina: SJBP Zone: A 70-day season may be held between October 1 and December 31, with a 2-bird daily bag limit, except for the Northeast Hunt Unit and Northampton County, which is closed.

RP Zone: A 70-day season may be held between October 1 and February 15, with a 5-bird daily bag limit.

Pennsylvania: SJBP Zone: A 40-day season may be held between November 15 and January 14, with a 2-bird daily bag limit.

Pymatuning Zone: A 35-day season may be held between October 1 and January 31, with a 1-bird daily bag limit.

RP Zone: A 70-day season may be held between November 15 and February 15, with a 5-bird daily bag limit.

AP Zone: A 45-day season may be held between the fourth Saturday in October (October 23) and January 31, with a 3-bird daily bag limit.

Special Late Goose Season Area: An experimental season may be held from January 15 to February 15, with a 5-bird daily bag limit.

Rhode Island: A 60-day season may be held between October 1 and January 31, with a 2-bird daily bag limit. An experimental season may be held in designated areas from January 15 to February 15, with a 5-bird daily bag limit.

South Carolina: In designated areas, a 70-day season may be held during November 15 to February 15, with a 5-bird daily bag limit.

Vermont: A 45-day season may be held between the fourth Saturday in October (October 23) and January 31, with a 3-bird daily bag limit.

Virginia: SJBP Zone: A 40-day season may be held between November 15 and January 14, with a 2-bird daily bag limit. Additionally, an experimental season may be held between January 15 and February 15, with a 5-bird daily bag limit.

AP Zone: A 45-day season may be held between November 15 and January 31, with a 1-bird daily bag limit during the first 25 days and a 2-bird daily bag limit during the last 20 days.

RP Zone: A 70-day season may be held between November 15 and February 15, with a 5-bird daily bag limit.

Back Bay Area: Season is closed.

West Virginia: A 70-day season may be held between October 1 and January 31, with a 3-bird daily bag limit.

Light Geese

Season Lengths, Outside Dates, and Limits: States may select a 107-day season between October 1 and March 10, with a 15-bird daily bag limit and no possession limit. States may split their seasons into three segments, except in Delaware and Maryland, where, following the completion of their duck season, and until March 10, Delaware and Maryland may split the remaining portion of the season to allow hunting on Mondays, Wednesdays, Fridays, and Saturdays only.

Brant

Season Lengths, Outside Dates, and Limits: States may select a 50-day season between the Saturday nearest September 24 (September 25) and January 31, with a 2-bird daily bag limit. States may split their seasons into two segments.

Mississippi Flyway –

Ducks, Mergansers, and Coots

Outside Dates: Between the Saturday nearest September 24 (September 25) and the last Sunday in January (January 30).

Hunting Seasons and Duck Limits: 60 days, except that the season for pintails and canvasbacks may not exceed 30 days for each species, and season splits must conform to each State's zone/split configuration for duck hunting. The daily bag limit is 6 ducks, including no more than 4 mallards (no more than 2 of which may be females), 3 mottled ducks, 3 scaup, 1 black duck, 1 pintail, 1 canvasback, 2 wood ducks, and 2 redheads. A single pintail and canvasback may also be included in the 6-bird daily bag limit for designated youth-hunt days.

Merganser Limits: The daily bag limit is 5, only 1 of which may be a hooded merganser. In States that include mergansers in the duck bag limit, the daily limit is the same as the duck bag limit, only one of which may be a hooded merganser.

Coot Limits: The daily bag limit is 15 coots.

Zoning and Split Seasons: Alabama, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Missouri, Ohio, Tennessee, and Wisconsin may select hunting seasons by zones.

In Alabama, Indiana, Iowa, Kentucky, Louisiana, Michigan, Ohio, Tennessee, and Wisconsin, the season may be split into two segments in each zone.

In Arkansas, Minnesota, and Mississippi, the season may be split into three segments.

Geese

Split Seasons: Seasons for geese may be split into three segments. Three-way split seasons for Canada geese require Mississippi Flyway Council and U.S. Fish and Wildlife Service approval and a 3-year evaluation by each participating State.

Season Lengths, Outside Dates, and Limits: States may select seasons for light geese not to exceed 107 days, with 20 geese daily between the Saturday nearest September 24 (September 25) and March 10; for white-fronted geese not to exceed 86 days, with 2 geese daily or 107 days with 1 goose daily between the Saturday nearest September 24 (September 25) and the Sunday nearest February 15 (February 13); and for brant not to exceed 70 days, with 2 brant daily or 107 days with 1 brant daily between the Saturday nearest September 24 (September 25) and January 31. There is no possession limit for light geese. Specific regulations for Canada geese and exceptions to the above general provisions are shown below by State. Except as noted below, the outside dates for Canada geese are the Saturday nearest September 24 (September 25) and January 31.

Alabama: In the SJBP Goose Zone, the season for Canada geese may not exceed 50 days. Elsewhere, the season for Canada geese may extend for 70 days in the respective duck-hunting zones. The daily bag limit is 2 Canada geese.

Arkansas: In the Northwest Zone, the season for Canada geese may extend for 33 days, provided that one segment of at least 9 days occurs prior to October 15. In the remainder of the State, the season may not exceed 23 days. The season may extend to February 15, and may be split into 2 segments. The daily bag limit is 2 Canada geese.

Illinois: The total harvest of Canada geese in the State will be limited to 74,200 birds. The daily bag limit is 2 Canada geese. The possession limit is 10 Canada geese.

(a) North Zone—The season for Canada geese will close after 86 days or when 15,300 birds have been harvested in the Northern Illinois Quota Zone, whichever occurs first.

(a) Central Zone—The season for Canada geese will close after 86 days or when 17,500 birds have been harvested in the Central Illinois Quota Zone, whichever occurs first.

(c) South Zone—The season for Canada geese will close after 86 days or when 8,600 birds have been harvested in the Southern Illinois Quota Zone, whichever occurs first.

Indiana: The season for Canada geese may extend for 70 days, except in the SJBP Zone, where the season may not exceed 50 days. The daily bag limit is 2 Canada geese.

Iowa: The season may extend for 60 days. The daily bag limit is 2 Canada geese.

Kentucky: (a) Western Zone—The season for Canada geese may extend for 66 days (81 days in Fulton County), and the harvest will be limited to 10,300 birds. Of the 10,300-bird quota, 6,700 birds will be allocated to the Ballard Reporting Area and 2,600 birds will be

allocated to the Henderson/Union Reporting Area. If the quota in either reporting area is reached prior to completion of the 66-day season, the season in that reporting area will be closed. If the quotas in both the Ballard and Henderson/Union reporting areas are reached prior to completion of the 66-day season, the season in the counties and portions of counties that comprise the Western Goose Zone (listed in State regulations) may continue for an additional 7 days, not to exceed a total of 66 days (81 days in Fulton County). The season in Fulton County may extend to February 15. The daily bag limit is 2 Canada geese.

(b) Pennyroyal/Coalfield Zone—The season may extend for 50 days. The daily bag limit is 2 Canada geese.

(c) Remainder of the State—The season may extend for 50 days. The daily bag limit is 2 Canada geese.

Louisiana: The season for Canada geese may extend for 9 days. During the season, the daily bag limit is 1 Canada goose and 2 white-fronted geese with an 86-day white-fronted goose season or 1 white-fronted goose with a 107-day season. Hunters participating in the Canada goose season must possess a special permit issued by the State.

Michigan: (a) MVP Zone—The total harvest of Canada geese will be limited to 50,000 birds. The framework opening date for all geese is September 16, and the season for Canada geese may extend for 30 days. The daily bag limit is 2 Canada geese.

(1) Allegan County GMU—The Canada goose season will close after 25 days or when 1,500 birds have been harvested, whichever occurs first. The daily bag limit is 1 Canada goose.

(2) Muskegon Wastewater GMU—The Canada goose season will close after 25 days or when 500 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese.

(b) SJBP Zone—The framework opening date for all geese is September 16, and the season for Canada geese may extend for 30 days. The daily bag limit is 2 Canada geese.

(1) Saginaw County GMU—The Canada goose season will close after 50 days or when 2,000 birds have been harvested, whichever occurs first. The daily bag limit is 1 Canada goose.

(2) Tuscola/Huron GMU—The Canada goose season will close after 50 days or when 750 birds have been harvested, whichever occurs first. The daily bag limit is 1 Canada goose.

(c) Southern Michigan and Central Michigan GMUs—A special Canada goose season may be held between January 1 and January 30. The daily bag limit is 5 Canada geese.

Minnesota: (a) West Zone. (1) West Central Zone—The season for Canada geese may extend for 25 days. The daily bag limit is 1 Canada goose.

(2) Remainder of West Zone—The season for Canada geese may extend for 35 days. The daily bag limit is 1 Canada goose.

(b) Northwest Zone—The season for Canada geese may extend for 40 days. The daily bag limit is 1 Canada goose.

(c) Remainder of the State—The season for Canada geese may extend for 60 days. The daily bag limit is 2 Canada geese.

(d) Special Late Canada Goose Season—A special Canada goose season of up to 10 days may be held in December, except in the West Central Goose zone. During the special season, the daily bag limit is 5 Canada geese, except in the Southeast Goose Zone, where the daily bag limit is 2.

Mississippi: The season for Canada geese may extend for 70 days. The daily bag limit is 3 Canada geese.

Missouri: (a) Southeast Zone—The season for Canada geese may extend for 77 days. The season may be split into 3 segments, provided that at least 1 segment occurs prior to December 1. The daily bag limit is 3 Canada geese through October 31 and 2 Canada geese thereafter.

(b) Remainder of the State—(1) North Zone—The season for Canada geese may extend for 77 days, with no more than 30 days occurring after November 30. The season may be split into 3 segments, provided that 1 segment of at least 9 days occurs prior to October 15. The daily bag limit is 3 Canada geese through October 31, 2 Canada geese from November 1 to November 30, and 1 Canada goose thereafter.

(2) Middle Zone—The season for Canada geese may extend for 77 days, with no more than 30 days occurring after November 30. The season may be split into 3 segments, provided that 1 segment of at least 9 days occurs prior to October 15. The daily bag limit is 3 Canada geese through October 31, 2 Canada geese from November 1 to November 30, and 1 Canada goose thereafter.

(3) South Zone—The season for Canada geese may extend for 77 days. The season may be split into 3 segments, provided that at least 1 segment occurs prior to December 1. The daily bag limit is 3 Canada geese through October 31 and 2 Canada geese thereafter.

Ohio: The season for Canada geese may extend for 70 days in the respective duck-hunting zones, with a daily bag limit of 2 Canada geese, except in the Lake Erie SJBP Zone, where the season may not exceed 35 days and the daily bag limit is 1 Canada goose. A special Canada goose season of up to 22 days, beginning the first Saturday after January 10, may be held in the following Counties: Allen (north of U.S. Highway 30), Fulton, Geauga (north of Route 6), Henry, Huron, Lucas (Lake Erie Zone closed), Seneca, and Summit (Lake Erie Zone closed). During the special season, the daily bag limit is 2 Canada geese.

Tennessee: (a) Northwest Zone—The season for Canada geese may not exceed 72 days, and may extend to February 15. The daily bag limit is 2 Canada geese.

(b) Southwest Zone—The season for Canada geese may extend for 59 days, at least 9 of which must occur before Oct. 16. The daily bag limit is 2 Canada geese.

(c) Kentucky/Barkley Lakes Zone—The season for Canada geese may extend for 59 days, at least 9 of which must occur before Oct. 16. The daily bag limit is 2 Canada geese.

(d) Remainder of the State—The season for Canada geese may extend for 70 days. The daily bag limit is 2 Canada geese.

Wisconsin: The total harvest of Canada geese in the State will be limited to 49,200 birds.

(a) Horicon Zone—The framework opening date for all geese is September 16. The harvest of Canada geese is limited to 19,000 birds. The season may not exceed 95 days. All Canada geese harvested must be tagged. The daily bag limit is 2 Canada geese, and the season limit will be the number of tags issued to each permittee.

(b) Collins Zone—The framework opening date for all geese is September 16. The harvest of Canada geese is limited to 700 birds. The season may not exceed 68 days. All Canada geese harvested must be tagged. The daily bag limit is 2 Canada geese, and the season limit will be the number of tags issued to each permittee.

(c) Exterior Zone—The framework opening date for all geese is September 16. The harvest of Canada geese is limited to 29,500 birds, 500 of which are allocated to the Mississippi River Subzone. The season may not exceed 95 days, except in the Mississippi River Subzone, where the season may not exceed 71 days. The daily bag limit is 2 Canada geese. In that portion of the Exterior Zone outside the Mississippi River Subzone, the progress of the harvest must be monitored, and the season closed, if necessary, to ensure that the harvest does not exceed 29,000 birds.

Additional Limits: In addition to the harvest limits stated for the respective zones above, an additional 4,500 Canada

geese may be taken in the Horicon Zone under special agricultural permits.

Quota Zone Closures: When it has been determined that the quota of Canada geese allotted to the Northern Illinois, Central Illinois, and Southern Illinois Quota Zones in Illinois; the Ballard and Henderson-Union Subzones in Kentucky; the Allegan County, Muskegon Wastewater, Saginaw County, and Tuscola/Huron Goose Management Units in Michigan; and the Exterior Zone in Wisconsin will have been filled, the season for taking Canada geese in the respective zone (and associated area, if applicable) will be closed, either by the Director upon giving public notice through local information media at least 48 hours in advance of the time and date of closing, or by the State through State regulations with such notice and time (not less than 48 hours) as they deem necessary.

Central Flyway

Ducks, Mergansers, and Coots

Outside Dates: Between the Saturday nearest September 24 (September 25) and the last Sunday in January (January 30).

Hunting Seasons and Duck Limits:

(1) High Plains Mallard Management Unit (roughly defined as that portion of the Central Flyway which lies west of the 100th meridian): 97 days, except pintails and canvasbacks, which may not exceed 39 days, and season splits must conform to each State's zone/split configuration for duck hunting. The daily bag limit is 6 ducks, including no more than 5 mallards (no more than 2 of which may be hens), 1 mottled duck, 1 pintail, 1 canvasback, 2 redheads, 3 scaup, and 2 wood ducks. The last 23 days may start no earlier than the Saturday nearest December 10 (December 11). A single pintail and canvasback may also be included in the 6-bird daily bag limit for designated youth-hunt days.

(2) Remainder of the Central Flyway: 74 days, except pintails and canvasbacks, which may not exceed 39 days, and season splits must conform to each State's zone/split configuration for duck hunting. The daily bag limit is 6 ducks, including no more than 5 mallards (no more than 2 of which may be hens), 1 mottled duck, 1 pintail, 1 canvasback, 2 redheads, 3 scaup, and 2 wood ducks. A single pintail and canvasback may also be included in the 6-bird daily bag limit for designated youth-hunt days.

Merganser Limits: The daily bag limit is 5 mergansers, only 1 of which may be a hooded merganser. In States that include mergansers in the duck daily bag limit, the daily limit may be the same as the duck bag limit, only one of which may be a hooded merganser.

Coot Limits: The daily bag limit is 15 coots.

Zoning and Split Seasons: Kansas (Low Plains portion), Montana, Nebraska (Low Plains portion), New Mexico, Oklahoma (Low Plains portion), South Dakota (Low Plains portion), Texas (Low Plains portion), and Wyoming may select hunting seasons by zones.

In Kansas, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming, the regular season may be split into two segments.

In Colorado, the season may be split into three segments.

Geese

Split Seasons: Seasons for geese may be split into three segments. Three-way split seasons for Canada geese require Central Flyway Council and U.S. Fish and Wildlife Service approval, and a 3-year evaluation by each participating State.

Outside Dates: For dark geese, seasons may be selected between the outside dates of the Saturday nearest September 24 (September 25) and the Sunday nearest February 15 (February 13). For light geese, outside dates for seasons may be selected between the Saturday nearest September 24 (September 25) and March 10. In the Rainwater Basin Light Goose Area (East and West) of Nebraska, temporal and spatial restrictions consistent with the experimental late-winter snow goose hunting strategy endorsed by the Central Flyway Council in July 1999, are required.

Season Lengths and Limits:

Light Geese: States may select a light goose season not to exceed 107 days. The daily bag limit for light geese is 20 with no possession limit.

Dark Geese: In Kansas, Nebraska, North Dakota, Oklahoma, South Dakota, and the Eastern Goose Zone of Texas, States may select a season for Canada geese (or any other dark goose species except white-fronted geese) not to exceed 95 days with a daily bag limit of 3. Additionally, in the Eastern Goose Zone of Texas, an alternative season of 107 days with a daily bag limit of 1 Canada goose may be selected. For white-fronted geese, these States may select either a season of 86 days with a bag limit of 2 or a 107-day season with a bag limit of 1.

In South Dakota, for Canada geese in the Big Stone Power Plant Area of Canada Goose Unit 3, the daily bag limit is 3 until November 30, and 2 thereafter.

In Montana, New Mexico and Wyoming, States may select seasons not to exceed 107 days. The daily bag limit for dark geese is 5 in the aggregate.

In Colorado, the season may not exceed 95 days. The daily bag limit is 3 dark geese in the aggregate.

In the Western Goose Zone of Texas, the season may not exceed 95 days. The daily bag limit for Canada geese (or any other dark goose species except white-fronted geese) is 3. The daily bag limit for white-fronted geese is 1.

Pacific Flyway

Ducks, Mergansers, Coots, Common Moorhens, and Purple Gallinules

Hunting Seasons and Duck Limits: Concurrent 107 days, except that the season for pintails and canvasbacks may not exceed 60 days, and season splits must conform to each State's zone/split configuration for duck hunting. The daily bag limit is 7 ducks and mergansers, including no more than 2 female mallards, 1 pintail, 1 canvasback, 4 scaup, and 2 redheads. A single pintail and canvasback may also be included in the 7-bird daily bag limit for designated youth-hunt days.

The season on coots and common moorhens may be between the outside dates for the season on ducks, but not to exceed 107 days.

Coot, Common Moorhen, and Purple Gallinule Limits: The daily bag and possession limits of coots, common moorhens, and purple gallinules are 25, singly or in the aggregate.

Outside Dates: Between the Saturday nearest September 24 (September 25) and the last Sunday in January (January 30).

Zoning and Split Seasons: Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington may select hunting seasons by zones.

Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington may split their seasons into two segments.

Colorado, Montana, New Mexico, and Wyoming may split their seasons into three segments.

Colorado River Zone, California: Seasons and limits shall be the same as seasons and limits selected in the adjacent portion of Arizona (South Zone).

Geese

Season Lengths, Outside Dates, and Limits:

California, Oregon, and Washington: Except as subsequently noted, 100-day seasons may be selected, with outside dates between the Saturday nearest October 1 (October 2), and the last Sunday in January (January 30). Basic

daily bag limits are 3 light geese and 4 dark geese, except in California, Oregon, and Washington, where the dark goose bag limit does not include brant.

Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, and Wyoming: Except as subsequently noted, 107-day seasons may be selected, with outside dates between the Saturday nearest September 24 (September 25), and the last Sunday in January (January 30). Basic daily bag limits are 3 light geese and 4 dark geese.

Split Seasons: Unless otherwise specified, seasons for geese may be split into up to 3 segments.

Three-way split seasons for Canada geese and white-fronted geese require Pacific Flyway Council and U.S. Fish and Wildlife Service approval and a 3-year evaluation by each participating State.

Brant Season

A 16-consecutive-day season may be selected in Oregon. A 16-day season may be selected in Washington, and this season may be split into 2-segments. A 30-consecutive-day season may be selected in California. In these States, the daily bag limit is 2 brant and is in addition to dark goose limits.

Arizona: The daily bag limit for dark geese is 3.

California: Northeastern Zone: The daily bag limit is 3 geese and may include no more than 2 dark geese; including not more than 1 cackling Canada goose or 1 Aleutian Canada goose.

Southern Zone: In the Imperial County Special Management Area, light geese only may be taken from the end of the general goose hunting season through the first Sunday in February (February 6).

Balance-of-the-State Zone: Limits may not include more than 3 geese per day, of which not more than 1 may be a cackling Canada goose or Aleutian Canada goose, except in Del Norte and Humboldt Counties where the daily bag limit may include 2 Cackling or Aleutian Canada geese. Two areas in the Balance-of-the-State Zone are restricted in the hunting of certain geese:

(1) In the Sacramento Valley Special Management Area (West), the season on white-fronted geese must begin no earlier than the last Saturday in October and end on or before December 14, and the daily bag limit shall contain no more than 2 white-fronted geese.

(2) In the Sacramento Valley Special Management Area (East), there will be no open season for Canada geese.

Oregon: Except as subsequently noted, the dark goose daily bag limit is 4, including not more than 1 cackling Canada goose or Aleutian Canada goose.

Harney, Klamath, Lake, and Malheur County Zone—For Lake County only, the daily dark goose bag limit may not include more than 2 white-fronted geese.

Northwest Special Permit Zone: Except for designated areas, there will be no open season on Canada geese. In the designated areas, individual quotas will be established that collectively will not exceed 165 dusky Canada geese. See section on quota zones. In those designated areas, the daily bag limit of dark geese is 4 and may include no more than 1 Aleutian Canada goose. Season dates in the Lower Columbia / N. Willamette Valley Management Area may be different than the remainder of the Northwest Special Permit Zone; however, for those season segments different from the Northwest Special Permit Zone, the cackling Canada goose limit is 2.

Closed Zone: Those portions of Coos and Curry Counties south of Bandon and west of U.S. 101 and all of Tillamook County.

Washington: The daily bag limit is 4 geese, including 4 dark geese but not more than 3 light geese. A 107-day season may be selected in Areas 4 and 5 (eastern Washington).

Southwest Quota Zone: In the Southwest Quota Zone, except for designated areas, there will be no open season on Canada geese. In the designated areas, individual quotas will be established that collectively will not exceed 85 dusky Canada geese. See section on quota zones. In this area, the daily bag limit of dark geese is 4 and may include 4 cackling Canada geese. In Southwest Quota Zone Area 2B (Pacific and Grays Harbor Counties), the dark goose bag limit may include 1 Aleutian Canada goose.

Colorado: The daily bag limit for dark geese is 3 geese.

Idaho: Northern Unit: The daily bag limit is 4 geese, including 4 dark geese, but not more than 3 light geese.

Southwest Unit and Southeastern Unit: The daily bag limit on dark geese is 4.

Montana: West of Divide Zone and East of Divide Zone: The daily bag limit of dark geese is 4.

Nevada: The daily bag limit for dark geese is 3 except in the Lincoln and Clark County Zone, where the daily bag limit of dark geese is 2.

New Mexico: The daily bag limit for dark geese is 3.

Utah: The daily bag limit for dark geese is 3.

Wyoming: The daily bag limit for dark geese is 4.

Quota Zones: Seasons on dark geese must end upon attainment of individual quotas of dusky Canada geese allotted to the designated areas of Oregon and Washington. The September Canada goose season, the regular goose season, any special late dark goose season, and any extended falconry season, combined, must not exceed 107 days, and the established quota of dusky Canada geese must not be exceeded. Hunting of dark geese in those designated areas will only be by hunters possessing a State-issued permit authorizing them to do so. In a Service-approved investigation, the State must obtain quantitative information on hunter compliance of those regulations aimed at reducing the take of dusky Canada geese. If the monitoring program cannot be conducted, for any reason, the season must immediately close. In the designated areas of the Washington Southwest Quota Zone, a special late dark goose season may be held between the Saturday following the close of the general goose season and March 10. In the Northwest Special Permit Zone of Oregon, the framework closing date is extended to the Sunday closest to March 1 (February 27). Regular dark goose seasons may be split into 3 segments within the Oregon and Washington quota zones.

Swans

In portions of the Pacific Flyway (Montana, Nevada, and Utah), an open season for taking a limited number of swans may be selected. Permits will be issued by the State and will authorize each permittee to take no more than 1 swan per season. Each State's season may open no earlier than the Saturday nearest October 1 (October 2). These seasons are also subject to the following conditions:

Montana: No more than 500 permits may be issued. The season must end no later than December 1. The State must implement a harvest-monitoring program to measure the species composition of the swan harvest and should use appropriate measures to maximize hunter compliance in reporting bill measurement and color information.

Utah: No more than 2,000 permits may be issued. During the swan season, no more than 10 trumpeter swans may be taken. The season must end no later than the second Sunday in December (December 12) or upon attainment of 10 trumpeter swans in the harvest, whichever occurs earliest. The Utah season remains subject to the terms of the Memorandum of Agreement entered into with the Service in August 2001, regarding harvest monitoring, season

closure procedures, and education requirements to minimize the take of trumpeter swans during the swan season.

Nevada: No more than 650 permits may be issued. During the swan season, no more than 5 trumpeter swans may be taken. The season must end no later than the Sunday following January 1 (January 2) or upon attainment of 5 trumpeter swans in the harvest, whichever occurs earliest.

In addition, the States of Utah and Nevada must implement a harvest-monitoring program to measure the species composition of the swan harvest. The harvest-monitoring program must require that all harvested swans or their species-determinant parts be examined by either State or Federal biologists for the purpose of species classification. The States should use appropriate measures to maximize hunter compliance in providing bagged swans for examination. Further, the States of Montana, Nevada, and Utah must achieve at least an 80-percent compliance rate, or subsequent permits will be reduced by 10 percent. All three States must provide to the Service by June 30, 2004, a report detailing harvest, hunter participation, reporting compliance, and monitoring of swan populations in the designated hunt areas.

Tundra Swans

In portions of the Atlantic Flyway (North Carolina and Virginia) and the Central Flyway (North Dakota, South Dakota [east of the Missouri River], and that portion of Montana in the Central Flyway), an open season for taking a limited number of tundra swans may be selected. Permits will be issued by the States that authorize the take of no more than 1 tundra swan per permit. A second permit may be issued to hunters from unused permits remaining after the first drawing. The States must obtain harvest and hunter participation data. These seasons are also subject to the following conditions:

In the Atlantic Flyway:

—The season is experimental.
—The season may be 90 days, from October 1 to January 31.
—In North Carolina, no more than 5,000 permits may be issued.
—In Virginia, no more than 600 permits may be issued.

In the Central Flyway:

—The season may be 107 days, from the Saturday nearest October 1 (October 2) to January 31.
—In the Central Flyway portion of Montana, no more than 500 permits may be issued.
—In North Dakota, no more than 2,200 permits may be issued.
—In South Dakota, no more than 1,300 permits may be issued.

Area, Unit, and Zone Descriptions

Ducks (Including Mergansers) and Coots

Atlantic Flyway

Connecticut: North Zone: That portion of the State north of I–95.

South Zone: Remainder of the State.

Maine: North Zone: That portion north of the line extending east along Maine State Highway 110 from the New Hampshire and Maine State line to the intersection of Maine State Highway 11 in Newfield; then north and east along Route 11 to the intersection of U.S. Route 202 in Auburn; then north and east on Route 202 to the intersection of Interstate Highway 95 in Augusta; then north and east along I–95 to Route 15 in Bangor; then east along Route 15 to Route 9; then east along Route 9 to Stony Brook in Baileyville; then east along Stony Brook to the United States border.

South Zone: Remainder of the State.

Massachusetts: Western Zone: That portion of the State west of a line extending south from the Vermont State line on I–91 to MA 9, west on MA 9 to MA 10, south on MA 10 to U.S. 202, south on U.S. 202 to the Connecticut State line.

Central Zone: That portion of the State east of the Berkshire Zone and west of a line extending south from the New Hampshire State line on I–95 to U.S. 1, south on U.S. 1 to I–93, south on I–93 to MA 3, south on MA 3 to U.S. 6, west on U.S. 6 to MA 28, west on MA 28 to I–195, west to the Rhode Island State line; except the waters, and the lands 150 yards inland from the high-water mark, of the Assonet River upstream to the MA 24 bridge, and the Taunton River upstream to the Center St.–Elm St. bridge shall be in the Coastal Zone.

Coastal Zone: That portion of Massachusetts east and south of the Central Zone.

New Hampshire: Coastal Zone: That portion of the State east of a line extending west from the Maine State line in Rollinsford on NH 4 to the city of Dover, south to NH 108, south along NH 108 through Madbury, Durham, and Newmarket to NH 85 in Newfields, south to NH 101 in Exeter, east to NH 51 (Exeter-Hampton Expressway), east to I–95 (New Hampshire Turnpike) in Hampton, and south along I–95 to the Massachusetts State line.

Inland Zone: That portion of the State north and west of the above boundary and along the Massachusetts State line crossing the Connecticut River to Interstate 91 and northward in Vermont to Route 2, east to 102, northward to the Canadian border.

New Jersey: Coastal Zone: That portion of the State seaward of a line beginning at the New York State line in Raritan Bay and extending west along the New York State line to NJ 440 at Perth Amboy; west on NJ 440 to the Garden State Parkway; south on the Garden State Parkway to the shoreline at Cape May and continuing to the Delaware State line in Delaware Bay.

North Zone: That portion of the State west of the Coastal Zone and north of a line extending west from the Garden State Parkway on NJ 70 to the New Jersey Turnpike, north on the turnpike to U.S. 206, north on U.S. 206 to U.S. 1 at Trenton, west on U.S. 1 to the Pennsylvania State line in the Delaware River.

South Zone: That portion of the State not within the North Zone or the Coastal Zone.

New York: Lake Champlain Zone: The U.S. portion of Lake Champlain and that area east and north of a line extending along NY 9B from the Canadian border to U.S. 9, south along U.S. 9 to NY 22 south of Keesville; south along NY 22 to the west shore of South Bay, along and around the shoreline of South Bay to NY 22 on the east shore of South Bay; southeast along NY 22 to U.S. 4, northeast along U.S. 4 to the Vermont State line.

Long Island Zone: That area consisting of Nassau County, Suffolk County, that area of Westchester County southeast of I–95, and their tidal waters.

Western Zone: That area west of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, and south along I–81 to the Pennsylvania State line.

Northeastern Zone: That area north of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81 to NY 31, east along NY 31 to NY 13, north along NY 13 to NY 49, east along NY 49 to NY 365, east along NY 365 to NY 28, east along NY 28 to NY 29, east along NY 29 to I–87, north along I–87 to U.S. 9 (at Exit 20), north along U.S. 9 to NY 149, east along NY 149 to U.S. 4, north along U.S. 4 to the Vermont State line, exclusive of the Lake Champlain Zone.

Southeastern Zone: The remaining portion of New York.

Pennsylvania: Lake Erie Zone: The Lake Erie waters of Pennsylvania and a shoreline margin along Lake Erie from New York on the east to Ohio on the west extending 150 yards inland, but including all of Presque Isle Peninsula.

Northwest Zone: The area bounded on the north by the Lake Erie Zone and including all of Erie and Crawford Counties and those portions of Mercer and Venango Counties north of I–80.

North Zone: That portion of the State east of the Northwest Zone and north of a line extending east on I–80 to U.S. 220, Route 220 to I–180, I–180 to I–80, and I–80 to the Delaware River.

South Zone: The remaining portion of Pennsylvania.

Vermont: Lake Champlain Zone: The U.S. portion of Lake Champlain and that area north and west of the line extending from the New York State line along U.S. 4 to VT 22A at Fair Haven; VT 22A to U.S. 7 at Vergennes; U.S. 7 to the Canadian border.

Interior Zone: That portion of Vermont west of the Lake Champlain Zone and eastward of a line extending from the Massachusetts State line at Interstate 91; north along Interstate 91 to U.S. 2; east along U.S. 2 to VT 102; north along VT 102 to VT 253; north along VT 253 to the Canadian border.

Connecticut River Zone: The remaining portion of Vermont east of the Interior Zone.

West Virginia: Zone 1: That portion outside the boundaries in Zone 2.

Zone 2 (Allegheny Mountain Upland): That area bounded by a line extending south along U.S. 220 through Keyser to U.S. 50; U.S. 50 to WV 93; WV 93 south to WV 42; WV 42 south to Petersburg; WV 28 south to Minnehaha Springs; WV 39 west to U.S. 219; U.S. 219 south to I–64; I–64 west to U.S. 60; U.S. 60 west to U.S. 19; U.S. 19 north to I–79, I–79 north to I–68; I–68 east to the Maryland State line; and along the State line to the point of beginning.

Mississippi Flyway

Alabama: South Zone: Mobile and Baldwin Counties.

North Zone: The remainder of Alabama.

Illinois: North Zone: That portion of the State north of a line extending east from the Iowa State line along Illinois Highway 92 to Interstate Highway 280, east along I–280 to I–80, then east along I–80 to the Indiana State line.

Central Zone: That portion of the State south of the North Zone to a line extending east from the Missouri State line along the Modoc Ferry route to Modoc Ferry Road, east along Modoc Ferry Road to Modoc Road, northeasterly along Modoc Road and St. Leo's Road to Illinois Highway 3, north along Illinois 3 to Illinois 159, north along Illinois 159 to Illinois 161, east along Illinois 161 to Illinois 4, north along Illinois 4 to Interstate Highway 70, east along I–70 to the Bond County line, north and east along the Bond County line to Fayette County, north and east along the Fayette County line to Effingham County, east and south along the Effingham County line to I–70, then east along I–70 to the Indiana State line.

South Zone: The remainder of Illinois.

Indiana: North Zone: That portion of the State north of a line extending east from the Illinois State line along State Road 18 to U.S. Highway 31, north along U.S. 31 to U.S. 24, east along U.S. 24 to Huntington, then southeast along U.S. 224 to the Ohio State line.

Ohio River Zone: That portion of the State south of a line extending east from the Illinois State line along Interstate Highway 64 to New Albany, east along State Road 62 to State Road 56, east along State Road 56 to Vevay, east and north on State 156 along the Ohio River to North Landing, north along State 56 to U.S. Highway 50, then northeast along U.S. 50 to the Ohio State line.

South Zone: That portion of the State between the North and Ohio River Zone boundaries.

Iowa: North Zone: That portion of the State north of a line extending east from the Nebraska State line along State Highway 175 to State Highway 37, southeast along State Highway 37 to U.S. Highway 59, south along U.S. 59 to Interstate Highway 80, then east along I–80 to the Illinois State line.

South Zone: The remainder of Iowa.

Kentucky: West Zone: All counties west of and including Butler, Daviess, Ohio, Simpson, and Warren Counties.

East Zone: The remainder of Kentucky.

Louisiana: West Zone: That portion of the State west and south of a line extending south from the Arkansas State line along Louisiana Highway 3 to Bossier City, east along Interstate Highway 20 to Minden, south along Louisiana 7 to Ringgold, east along Louisiana 4 to Jonesboro, south along U.S. Highway 167 to Lafayette, southeast along U.S. 90 to the Mississippi State line.

East Zone: The remainder of Louisiana.

Catahoula Lake Area: All of Catahoula Lake, including those portions known locally as Round Prairie, Catfish Prairie, and Frazier's Arm. See State regulations for additional information.

Michigan: North Zone: The Upper Peninsula.

Middle Zone: That portion of the Lower Peninsula north of a line beginning at the Wisconsin State line in Lake Michigan due west of the mouth of Stony Creek in Oceana County; then due east to, and easterly and southerly along the south shore of Stony Creek to Scenic Drive, easterly and southerly along Scenic Drive to Stony Lake Road, easterly along Stony Lake and Garfield Roads to Michigan Highway 20, east along Michigan 20 to U.S. Highway 10 Business Route (BR) in the city of Midland, easterly along U.S. 10 BR to U.S. 10, easterly along U.S. 10 to Interstate Highway 75/U.S. Highway 23, northerly along I–75/U.S. 23 to the U.S. 23 exit at Standish, easterly along U.S. 23 to the centerline of the Au Gres River, then southerly along the centerline of the Au Gres River to Saginaw Bay, then on a line directly east 10 miles into Saginaw Bay, and from that point on a line directly northeast to the Canadian border.

South Zone: The remainder of Michigan.

Missouri: North Zone: That portion of Missouri north of a line running west from the Illinois State line (Lock and Dam 25) on Lincoln County Highway N to Missouri Highway 79; south on Missouri Highway 79 to Missouri Highway 47; west on Missouri Highway 47 to Interstate 70; west on Interstate 70 to U.S. Highway 54; south on U.S. Highway 54 to U.S. Highway 50; west on U.S. Highway 50 to the Kansas State line.

South Zone: That portion of Missouri south of a line running west from the Illinois State line on Missouri Highway 34 to Interstate 55; south on Interstate 55 to U.S. Highway 62; west on U.S. Highway 62 to Missouri Highway 53; north on Missouri Highway 53 to Missouri Highway 51; north on Missouri Highway 51 to U.S. Highway 60; west on U.S. Highway 60 to Missouri Highway 21; north on Missouri Highway 21 to Missouri Highway 72; west on Missouri Highway 72 to Missouri Highway 32; west on Missouri Highway 32 to U.S. Highway 65; north on U.S. Highway 65 to U.S. Highway 54; west on U.S. Highway 54 to the Kansas State line.

Middle Zone: The remainder of Missouri.

Ohio: North Zone: That portion of the State north of a line extending east from the Indiana State line along U.S. Highway 30 to State Route 37, south along SR 37 to SR 95, east along SR 95 to LaRue-Prospect Road, east along LaRue-Prospect Road to SR 203, south along SR 203 to SR 739, east along SR 739 to SR 4, north along SR 4 to SR 309, east along SR 309 to U.S. 23, north along U.S. 23 to SR 231, north along SR 231 to U.S. 30, east along U.S. 30 to SR 42, north along SR 42 to SR 603, south along SR 603 to U.S. 30, east along U.S. 30 to SR 60, south along SR 60 to SR 39/60, east along SR 39/60 to SR 39, east along SR 39 to SR 241, east along SR

241 to U.S. 30, then east along U.S. 30 to the West Virginia State line.

South Zone: The remainder of Ohio.

Tennessee: Reelfoot Zone: All or portions of Lake and Obion Counties.

State Zone: The remainder of Tennessee.

Wisconsin: North Zone: That portion of the State north of a line extending east from the Minnesota State line along State Highway 77 to State 27, south along State 27 and 77 to U.S. Highway 63, and continuing south along State 27 to Sawyer County Road B, south and east along County B to State 70, southwest along State 70 to State 27, south along State 27 to State 64, west along State 64/27 and south along State 27 to U.S. 12, south and east on State 27/U.S. 12 to U.S. 10, east on U.S. 10 to State 310, east along State 310 to State 42, north along State 42 to State 147, north along State 147 to State 163, north along State 163 to Kewaunee County Trunk A, north along County Trunk A to State 57, north along State 57 to the Kewaunee/Door County Line, west along the Kewaunee/Door County Line to the Door/Brown County Line, west along the Door/Brown County Line to the Door/Oconto/Brown County Line, northeast along the Door/Oconto County Line to the Marinette/Door County Line, northeast along the Marinette/Door County Line to the Michigan State line.

South Zone: The remainder of Wisconsin.

Central Flyway

Kansas: High Plains Zone: That portion of the State west of U.S. 283.

Low Plains Early Zone: That area of Kansas east of U.S. 283, and generally west of a line beginning at the Junction of the Nebraska State line and KS 28; south on KS 28 to U.S. 36; east on U.S. 36 to KS 199; south on KS 199 to Republic Co. Road 563; south on Republic Co. Road 563 to KS 148; east on KS 148 to Republic Co. Road 138; south on Republic Co. Road 138 to Cloud Co. Road 765; south on Cloud Co. Road 765 to KS 9; west on KS 9 to U.S. 24; west on U.S. 24 to U.S. 281; north on U.S. 281 to U.S. 36; west on U.S. 36 to U.S. 183; south on U.S. 183 to U.S. 24; west on U.S. 24 to KS 18; southeast on KS 18 to U.S. 183; south on U.S. 183 to KS 4; east on KS 4 to I–135; south on I–135 to KS 61; southwest on KS 61 to KS 96; northwest on KS 96 to U.S. 56; west on U.S. 56 to U.S. 281; south on U.S. 281 to U.S. 54; and west on U.S. 54 to U.S. 183; north on U.S. 183 to U.S. 56; southwest on U.S. 56 to U.S. 283.

Low Plains Late Zone: The remainder of Kansas.

Montana (Central Flyway Portion): Zone 1: The Counties of Blaine, Carbon, Carter, Daniels, Dawson, Fallon, Fergus, Garfield, Golden Valley, Judith Basin, McCone, Musselshell, Petroleum, Phillips, Powder River, Richland, Roosevelt, Sheridan, Stillwater, Sweet Grass, Valley, Wheatland, Wibaux, and Yellowstone.

Zone 2: The remainder of Montana.

Nebraska: High Plains Zone: That portion of the State west of highways U.S. 183 and U.S. 20 from the South Dakota State line to Ainsworth, NE 7 and NE 91 to Dunning, NE 2 to Merna, NE 92 to Arnold, NE 40 and NE 47 through Gothenburg to NE 23, NE 23 to Elwood, and U.S. 283 to the Kansas State line.

Low Plains Zone 1: That portion of the State east of the High Plains Zone and north and west of a line extending from the South Dakota State line along NE 26E Spur to NE 12, west on NE 12 to the Knox/Boyd County line, south along the county line to the Niobrara River and along the Niobrara River to U.S. 183 (the High Plains Zone line). Where the Niobrara River forms the boundary, both banks will be in Zone 1.

Low Plains Zone 2: Area bounded by designated Federal and State highways and political boundaries beginning at the Kansas-Nebraska State line on U.S. Hwy. 73; north to NE Hwy. 67 north to U.S. Hwy 136; east to the Steamboat Trace (Trace); north to Federal Levee R–562; north and west to the Trace/Burlington Northern Railroad right-of-way; north to NE Hwy 2; west to U.S. Hwy 75; north to NE Hwy. 2; west to NE Hwy. 43; north to U.S. Hwy. 34; east to NE Hwy. 63; north and west to U.S. Hwy. 77; north to NE Hwy. 92; west to U.S. Hwy. 81; south to NE Hwy. 66; west to NE Hwy. 14; south to U.S. Hwy 34; west to NE Hwy. 2; south to U.S. Hwy. I–80; west to Gunbarrrel Rd. (Hall/Hamilton county line); south to Giltner Rd.; west to U.S. Hwy. 281; south to U.S. Hwy. 34; west to NE Hwy 10; north to County Road "R" (Kearney County) and County Road #742 (Phelps County); west to County Road #438 (Gosper County line); south along County Road #438 (Gosper County line) to County Road #726 (Furnas County Line); east to County Road #438 (Harlan County Line); south to U.S. Hwy 34; south and west to U.S. Hwy. 136; east to NE Hwy. 10; south to the Kansas-Nebraska State line.

Low Plains Zone 3: The area east of the High Plains Zone, excluding Low Plains Zone 1, north of Low Plains Zone 2.

Low Plains Zone 4: The area east of the High Plains Zone and south of Zone 2.

New Mexico (Central Flyway Portion): North Zone: That portion of the State north of I–40 and U.S. 54.

South Zone: The remainder of New Mexico.

North Dakota: High Plains Unit: That portion of the State south and west of a line from the South Dakota State line along U.S. 83 and I–94 to ND 41, north to U.S. 2, west to the Williams/Divide County line, then north along the County line to the Canadian border.

Low Plains: The remainder of North Dakota.

Oklahoma: High Plains Zone: The Counties of Beaver, Cimarron, and Texas.

Low Plains Zone 1: That portion of the State east of the High Plains Zone and north of a line extending east from the Texas State line along OK 33 to OK 47, east along OK 47 to U.S. 183, south along U.S. 183 to I–40, east along I–40 to U.S. 177, north along U.S. 177 to OK 33, west along OK 33 to I–35, north along I–35 to U.S. 412, west along U.S. 412 to OK 132, then north along OK 132 to the Kansas State line.

Low Plains Zone 2: The remainder of Oklahoma.

South Dakota: High Plains Unit: That portion of the State west of a line beginning at the North Dakota State line and extending south along U.S. 83 to U.S. 14, east along U.S. 14 to Blunt-Canning Road in Blunt, south along Blunt-Canning Road to SD 34, east to SD 47, south to I–90, east to SD 47, south to SD 49, south to Colome and then continuing south on U.S. 183 to the Nebraska State line.

North Zone: That portion of northeastern South Dakota east of the High Plains Unit and north of a line extending east along U.S. 212 to the Minnesota State line.

South Zone: That portion of Gregory County east of SD 47, Charles Mix County south of SD 44 to the Douglas County line, south on SD 50 to Geddes, east on the Geddes Hwy. to U.S. 281, south on U.S. 281 and U.S. 18 to SD 50, south and east on SD 50 to Bon Homme County line, the Counties of Bon Homme, Yankton, and Clay south of SD 50, and Union County south and west of SD 50 and I–29.

Middle Zone: The remainder of South Dakota.

Texas: High Plains Zone: That portion of the State west of a line extending south from the Oklahoma State line along U.S. 183 to Vernon, south along U.S. 283 to Albany, south along TX 6 to TX 351 to Abilene, south along U.S. 277 to Del Rio, then south along the Del Rio International Toll Bridge access road to the Mexico border.

Low Plains North Zone: That portion of northeastern Texas east of the High Plains Zone and north of a line beginning at the International Toll Bridge south of Del Rio, then extending east on U.S. 90 to San Antonio, then continuing east on I–10 to the Louisiana State line at Orange, Texas.

Low Plains South Zone: The remainder of Texas.

Wyoming (Central Flyway portion): Zone 1: The Counties of Converse, Goshen, Hot Springs, Natrona, Platte, and Washakie; and the portion of Park County east of the Shoshone National Forest boundary and south of a line beginning where the Shoshone National Forest boundary meets Park County Road 8VC, east along Park County Road 8VC to Park County Road 1AB, continuing east along Park County Road 1AB to Wyoming Highway 120, north along WY Highway 120 to WY Highway 294, south along WY Highway 294 to Lane 9, east along Lane 9 to Powel and WY Highway 14A, and finally east along WY Highway 14A to the Park County and Big Horn County line.

Zone 2: The remainder of Wyoming.

Pacific Flyway

Arizona—Game Management Units (GMU) as follows:

South Zone: Those portions of GMUs 6 and 8 in Yavapai County, and GMUs 10 and 12B–45.

North Zone: GMUs 1–5, those portions of GMUs 6 and 8 within Coconino County, and GMUs 7, 9, 12A.

California: Northeastern Zone: In that portion of California lying east and north of a line beginning at the intersection of the Klamath River with the California-Oregon line; south and west along the Klamath River to the mouth of Shovel Creek; along Shovel Creek to its intersection with Forest Service Road 46N05 at Burnt Camp; west to its junction with Forest Service Road 46N10; south and east to its Junction with County Road 7K007; south and west to its junction with Forest Service Road 45N22; south and west to its junction with Highway 97 and Grass Lake Summit; south along to its junction with Interstate 5 at the town of Weed; south to its junction with Highway 89; east and south along Highway 89 to Main Street Greenville; north and east to its junction with North Valley Road; south to its junction of Diamond Mountain Road; north and east to its junction with North Arm Road; south and west to the junction of North Valley Road; south to the junction with Arlington Road (A22); west to the junction of Highway 89; south and west to the junction of Highway 70; east on Highway 70 to Highway 395; south and east on Highway 395 to the point of intersection with the California-Nevada State line; north along the California-Nevada State line to the junction of the California-Nevada-Oregon State lines; west along the California-Oregon State line to the point of origin.

Colorado River Zone: Those portions of San Bernardino, Riverside, and Imperial Counties east of a line extending from the Nevada State line south along U.S. 95 to Vidal Junction; south on a road known as "Aqueduct Road" in San Bernardino County through the town of Rice to the San Bernardino-Riverside County line; south on a road known in Riverside County as the "Desert Center to Rice Road" to the town of Desert Center; east 31 miles on I–10 to the Wiley Well Road; south on this road to Wiley Well; southeast along the Army-Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south on the Blythe-Brawley paved road to the Ogilby and Tumco Mine Road; south on this road to U.S. 80; east seven miles on U.S. 80 to the Andrade-Algodones Road; south on this paved road to the Mexican border at Algodones, Mexico.

Southern Zone: That portion of southern California (but excluding the Colorado River Zone) south and east of a line extending from the Pacific Ocean east along the Santa Maria River to CA 166 near the City of Santa Maria; east on CA 166 to CA 99; south on CA 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to CA 178 at Walker Pass; east on CA 178 to U.S. 395 at the town of Inyokern; south on U.S. 395 to CA 58; east on CA 58 to I–15; east on I–15 to CA 127; north on CA 127 to the Nevada State line.

Southern San Joaquin Valley Temporary Zone: All of Kings and Tulare Counties and that portion of Kern County north of the Southern Zone.

Balance-of-the-State Zone: The remainder of California not included in the Northeastern, Southern, and Colorado River Zones, and the Southern San Joaquin Valley Temporary Zone.

Idaho: Zone 1: Includes all lands and waters within the Fort Hall Indian Reservation, including private inholdings; Bannock County; Bingham County, except that portion within the Blackfoot Reservoir drainage; and Power County east of ID 37 and ID 39.

Zone 2: Includes the following Counties or portions of Counties: Adams; Bear Lake; Benewah; Bingham within the Blackfoot Reservoir drainage; those portions of Blaine west of ID 75, south and east of U.S. 93, and between ID 75 and U.S. 93 north of U.S. 20 outside the Silver Creek drainage; Bonner; Bonneville; Boundary; Butte; Camas; Caribou except the Fort Hall Indian Reservation; Cassia within the Minidoka National Wildlife Refuge; Clark; Clearwater; Custer; Elmore within the Camas Creek drainage; Franklin; Fremont; Idaho; Jefferson; Kootenai; Latah; Lemhi; Lewis; Madison; Nez Perce; Oneida; Power within the Minidoka National Wildlife Refuge; Shoshone; Teton; and Valley Counties.

Zone 3: Includes the following Counties or portions of Counties: Ada; Blaine between ID 75 and U.S. 93 south of U.S. 20 and that additional area between ID 75 and U.S. 93 north of U.S. 20 within the Silver Creek drainage; Boise; Canyon; Cassia except within the Minidoka National Wildlife Refuge; Elmore except the Camas Creek drainage; Gem; Gooding; Jerome; Lincoln; Minidoka; Owyhee; Payette; Power west of ID 37 and ID 39 except that portion within the Minidoka National Wildlife Refuge; Twin Falls; and Washington Counties.

Nevada: Lincoln and Clark County Zone: All of Clark and Lincoln Counties.

Remainder-of-the-State Zone: The remainder of Nevada.

Oregon: Zone 1: Clatsop, Tillamook, Lincoln, Lane, Douglas, Coos, Curry, Josephine, Jackson, Linn, Benton, Polk, Marion, Yamhill, Washington, Columbia, Multnomah, Clackamas, Hood River, Wasco, Sherman, Gilliam, Morrow and Umatilla Counties.

Columbia Basin Mallard Management Unit: Gilliam, Morrow, and Umatilla Counties.

Zone 2: The remainder of the State.

Utah: Zone 1: All of Box Elder, Cache, Daggett, Davis, Duchesne, Morgan, Rich, Salt Lake, Summit, Unitah, Utah, Wasatch, and Weber Counties, and that part of Toole County north of I–80.

Zone 2: The remainder of Utah.

Washington: East Zone: All areas east of the Pacific Crest Trail and east of the Big White Salmon River in Klickitat County.

Columbia Basin Mallard Management Unit: Same as East Zone.

West Zone: All areas to the west of the East Zone.

Geese

Atlantic Flyway

Connecticut: NAP L-Unit: That portion of Fairfield County north of Interstate 95 and that portion of New Haven County: starting at I–95 bridge on Housatonic River; north of Interstate 95; west of Route 10 to the intersection of Interstate 691; west along Interstate 691 to Interstate 84; west and south on Interstate 84 to Route 67; north along Route 67 to the Litchfield County line,

then extending west along the Litchfield County line to the Shepaug River, then south to the intersection of the Litchfield and Fairfield County lines.

NAP H-Unit: All of the rest of the State not included in the AP or NAP–L descriptions.

AP Unit: Litchfield County and the portion of Hartford County, west of a line beginning at the Massachusetts State line in Suffield and extending south along Route 159 to its intersection with Route 91 in Hartford, and then extending south along Route 91 to its intersection with the Hartford/Middlesex County line.

South Zone: Same as for ducks.

North Zone: Same as for ducks.

Maryland: SJBP Zone: Allegheny, Carroll, Frederick, Garrett, Washington Counties and the portion of Montgomery County south of Interstate 270 and west of Interstate 495 to the Potomac River.

AP Zone: Remainder of the State.

Massachusetts: NAP Zone: Central Zone (same as for ducks) and that portion of the Coastal Zone that lies north of route 139 from Green Harbor.

AP Zone: Remainder of the State.

Special Late Season Area: That portion of the Coastal Zone (see duck zones) that lies north of the Cape Cod Canal and east of Route 3, north to the New Hampshire line.

New Hampshire: Same zones as for ducks.

New Jersey: North—that portion of the State within a continuous line that runs east along the New York State boundary line to the Hudson River; then south along the New York State boundary to its intersection with Route 440 at Perth Amboy; then west on Route 440 to its intersection with Route 287; then west along Route 287 to its intersection with Route 206 in Bedminster (Exit 18); then north along Route 206 to its intersection with Route 94: then west along Route 94 to the tollbridge in Columbia; then north along the Pennsylvania State boundary in the Delaware River to the beginning point.

South—that portion of the State within a continuous line that runs west from the Atlantic Ocean at Ship Bottom along Route 72 to Route 70; then west along Route 70 to Route 206; then south along Route 206 to Route 536; then west along Route 536 to Route 322; then west along Route 322 to Route 55; then south along Route 55 to Route 553 (Buck Road); then south along Route 553 to Route 40; then east along Route 40 to route 55; then south along Route 55 to Route 552 (Sherman Avenue); then west along Route 552 to Carmel Road; then south along Carmel Road to Route 49; then east along Route 49 to Route 555; then south along Route 555 to Route 553; then east along Route 553 to Route 649; then north along Route 649 to Route 670; then east along Route 670 to Route 47; then north along Route 47 to Route 548; then east along Route 548 to Route 49; then east along Route 49 to Route 50; then south along Route 50 to Route 9; then south along Route 9 to Route 625 (Sea Isle City Boulevard); then east along Route 625 to the Atlantic Ocean; then north to the beginning point.

New York: Lake Champlain Area: that area east and north of a continuous line extending along Route 11 from the New York-Canada boundary south to Route 9B, south along Route 9B to Route 9, south along Route 9 to Route 22 south of Keeseville, south along Route 22 to the west shore of South Bay along and around the shoreline of South Bay to Route 22 on the east shore of South Bay, southeast along Route 22 to Route 4, northeast along Route 4 to the New York-Vermont State line.

St. Lawrence Area: New York State Wildlife Management Units (WMUs): 6A, 6C, and 6H.

Northeast Area: that area north of a continuous line extending from Lake Ontario east along the north shore of the Salmon River to Interstate 81, south along Interstate Route 81 to Route 31, east along Route 31 to Route 13, north along Route 13 to Route 49, east along Route 49 to Route 365, east along Route 365 to Route 28, east along Route 28 to Route 29, east along Route 29 to Interstate Route 87, north along Interstate Route 87 to Route 9 (at Exit 20), north along Route 9 to Route 149, east along Route 149 to Route 4, north along Route 4 to the New York-Vermont boundary, excluding the Lake Champlain and St. Lawrence Areas.

Southwest Area: consists of the following WMUs: 9C, 9G, 9H, 9J, 9K, 9M, 9N, and 9R; that part of WMU 9A lying south of a continuous line extending from the New York-Ontario boundary east along Interstate Route 190 to State Route 31, then east along Route 31 to Route 78 in Lockport; that part of WMU 9F lying in Erie County; and that part of WMU 8G lying south and west of a continuous line extending from WMU 9F east along the NYS Thruway to Exit 48 in Batavia, then south along State Route 98 to WMU 9H.

South Central Area: consists of the following WMUs: 3A, 3C, 3H, 3K, 3N, 3P, 3R, 4G, 4H, 4N, 4O, 4P, 4R, 4W, 4X, 7R, 7S, 8T, 8W, 8X, 8Y, 9P, 9S, 9T, 9W, 9X, and 9Y; that part of WMU 3G lying in Putnam County; that part of WMU 3S lying northwest of Interstate Route 95; and that part of WMU 7M lying south of a continuous line extending from IR 81 at Cortland east along 41 Route to Route 26, then north along Route 26 to Route 23, then east along Route 23 to Route 8 at South New Berlin.

West Central Area: that area west of a continuous line extending from Lake Ontario east along the north shore of the Salmon River to Interstate Route 81 and then south along Interstate Route 81 to the New York-Pennsylvania boundary, excluding the Southwest and South Central Areas.

East Central Area: that area east of Interstate 81 that is south of a continuous line extending from Interstate Route 81 east along Route 31 to Route 13, north along Route 13 to Route 49, east along Route 49 to Route 365, east along Route 365 to Route 28, east along Route 28 to Route 29, east along Route 29 to Interstate Route 87, north along Interstate Route 87 to Route 9 (at Exit 20), north along Route 9 to Route 149, east along Route 149 to Route 4, north along Route 4 to the New York-Vermont boundary, and northwest of Interstate Route 95 in Westchester County, excluding the South Central Area.

Western Long Island Area: that area of Westchester County and its tidal waters southeast of Interstate Route 95 and that area of Nassau and Suffolk Counties lying west of a continuous line extending due south from the New York-Connecticut boundary to the northern end of Sound Road (near Wading River), then south along Sound Road to North Country Road, then west along North Country Road to Randall Road, then south along Randall Road to State Route 25A, then west along Route 25A to the William Floyd Parkway (County Route 46), then south along William Floyd Parkway to Fire Island Beach Road, then due south to International waters.

Eastern Long Island Area: that area of Suffolk County that is not part of the Western Long Island Area.

Special Late Hunting Area: consists of that area of Westchester County lying southeast of Interstate Route 95 and that area of Nassau and Suffolk Counties lying north of State Route 25A and west of a continuous line extending northward from State Route 25A along Randall Road (near Shoreham) to North Country Road, then east to Sound Road and then north to Long Island Sound and then due north to the New York-Connecticut boundary.

North Carolina: SJBP Hunt Zone: Includes the following counties or portions of counties: Anson, Cabarrus, Chatham, Davidson, Durham, Halifax (that portion east of NC 903), Iredell (that portion south of Interstate 40), Montgomery (that portion west of NC

109), Northampton (all of the county with the exception of that portion that is both north of U.S. 158 and east of NC 35), Richmond (that portion south of NC 73 and west of U.S. 220 and north of U.S. 74), Rowan, Stanly, Union, and Wake.

RP Hunt Zone: Includes the following counties or portions of counties: Alamance, Alleghany, Alexander, Ashe, Avery, Beaufort, Bertie (that portion south and west of a line formed by NC 45 at the Washington Co. line to U.S. 17 in Midway, U.S. 17 in Midway to U.S. 13 in Windsor, U.S. 13 in Windsor to the Hertford Co. line), Bladen, Brunswick, Buncombe, Burke, Caldwell, Carteret, Caswell, Catawba, Cherokee, Clay, Cleveland, Columbus, Craven, Cumberland, Davie, Duplin, Edgecombe, Forsyth, Franklin, Gaston, Gates, Graham, Granville, Greene, Guilford, Halifax (that portion west of NC 903), Harnett, Haywood, Henderson, Hertford, Hoke, Iredell (that portion north of Interstate 40), Jackson, Johnston, Jones, Lee, Lenoir, Lincoln, McDowell, Macon, Madison, Martin, Mecklenburg, Mitchell, Montgomery (that portion that is east of NC 109), Moore, Nash, New Hanover, Onslow, Orange, Pamlico, Pender, Person, Pitt, Polk, Randolph, Richmond (all of the county with exception of that portion that is south of NC 73 and west of U.S. 220 and north of U.S. 74), Robeson, Rockingham, Rutherford, Sampson, Scotland, Stokes, Surry, Swain, Transylvania, Vance, Warren, Watauga, Wayne, Wilkes, Wilson, Yadkin, and Yancey.

Northeast Hunt Unit: Includes the following counties or portions of counties: Bertie (that portion north and east of a line formed by NC 45 at the Washington County line to U.S. 17 in Midway, U.S. 17 in Midway to U.S. 13 in Windsor, U.S. 13 in Windsor to the Hertford Co. line), Camden, Chowan, Currituck, Dare, Hyde, Northampton (that portion that is both north of U.S. 158 and east of NC 35), Pasquotank, Perquimans, Tyrrell, and Washington.

Pennsylvania: Resident Canada Goose Zone: All of Pennsylvania except for Crawford, Erie, and Mercer Counties and the area east of I–83 from the Maryland State line to the intersection of U.S. Route 30 to the intersection of SR 441 to the intersection of I–283, east of I–283 to I–83, east of I–83 to the intersection of I–81, east of I–81 to the intersection of U.S. Route 322, east of U.S. Route 322 to the intersection of SR 147, east of SR 147 to the intersection of I–180, east of I–180 to the intersection of U.S. Route 220, east of U.S. Route 220 to the New York State line.

SJBP Zone: Erie, Mercer and Crawford Counties, except for the Pymatuning Zone (the area south of SR 198 from the Ohio State line to the intersection of SR 18 to the intersection of U.S. Route 322/SR 18, to the intersection of SR 3013, south to the Crawford/Mercer County line).

Pymatuning Zone: The area south of SR 198 from the Ohio State line to the intersection of SR 18 to the intersection of U.S. Route 322/SR 18, to the intersection of SR 3013, south to the Crawford/Mercer County line.

AP Zone: The area east of I–83 from the Maryland State line to the intersection of U.S. Route 30 to the intersection of SR 441 to the intersection of I–283, east of I–283 to I–83, east of I–83 to the intersection of I–81, east of I–81 to the intersection of U.S. Route 322, east of U.S. Route 322 to the intersection of SR 147, east of SR 147 to the intersection of I–180, east of I–180 to the intersection of U.S. Route 220, east of U.S. Route 220 to the New York State line.

Special Late Canada Goose Season Area: The SJBP zone (excluding the Pymatuning zone) and the northern portion of the AP zone defined as east of U.S. Route 220 from the New York State line, east of U.S. Route 220 to the intersection of I–180, east of I–180 to the intersection of SR 147, east of SR 147 to the intersection of U.S. Route 322, east of U.S. Route 322 to the intersection of I–81, north of I–81 to the intersection of I–80, and north of I–80 to the New Jersey State line.

Rhode Island: Special Area for Canada Geese: Kent and Providence Counties and portions of the towns of Exeter and North Kingston within Washington County (see State regulations for detailed descriptions).

South Carolina: Canada Goose Area: Statewide except for Clarendon County and that portion of Lake Marion in Orangeburg County and Berkeley County.

Vermont: Same zones as for ducks.

Virginia: AP Zone: The area east and south of the following line—the Stafford County line from the Potomac River west to Interstate 95 at Fredericksburg, then south along Interstate 95 to Petersburg, then Route 460 (SE) to City of Suffolk, then south along Route 32 to the North Carolina line.

SJBP Zone: The area to the west of the AP Zone boundary and east of the following line: the "Blue Ridge" (mountain spine) at the West Virginia-Virginia Border (Loudoun County-Clarke County line) south to Interstate 64 (the Blue Ridge line follows county borders along the western edge of Loudoun-Fauquier-Rappahannock-Madison-Greene-Albemarle and into Nelson Counties), then east along Interstate Rt. 64 to Route 15, then south along Rt. 15 to the North Carolina line.

RP Zone: The remainder of the State west of the SJBP Zone.

Back Bay Area: The waters of Back Bay and its tributaries and the marshes adjacent thereto, and on the land and marshes between Back Bay and the Atlantic Ocean from Sandbridge to the North Carolina line, and on and along the shore of North Landing River and the marshes adjacent thereto, and on and along the shores of Binson Inlet Lake (formerly known as Lake Tecumseh) and Red Wing Lake and the marshes adjacent thereto.

West Virginia: Same zones as for ducks.

Mississippi Flyway

Alabama: Same zones as for ducks, but in addition: SJBP Zone: That portion of Morgan County east of U.S. Highway 31, north of State Highway 36, and west of U.S. 231; that portion of Limestone County south of U.S. 72; and that portion of Madison County south of Swancott Road and west of Triana Road.

Arkansas: Northwest Zone: Benton, Carroll, Baxter, Washington, Madison, Newton, Crawford, Van Buren, Searcy, Sebastion, Scott, Franklin, Logan, Johnson, Pope, Yell, Conway, Perry, Faulkner, Pulaski, Boone, and Marion Counties.

Illinois: Same zones as for ducks, but in addition:

North Zone:

Northern Illinois Quota Zone: The Counties of McHenry, Lake, Kane, DuPage, and those portions of LaSalle and Will Counties north of Interstate Highway 80.

Central Zone:

Central Illinois Quota Zone: The Counties of Woodford, Peoria, Knox, Fulton, Tazewell, Mason, Cass, Morgan, Pike, Calhoun, and Jersey, and those portions of Grundy, LaSalle and Will Counties south of Interstate Highway 80.

South Zone:

Southern Illinois Quota Zone: Alexander, Jackson, Union, and Williamson Counties.

Indiana: Same zones as for ducks, but in addition:

SJBP Zone: Jasper, LaGrange, LaPorte, Starke, and Steuben Counties, and that portion of the Jasper-Pulaski Fish and Wildlife Area in Pulaski County.

Iowa: North Zone: That portion of the State north of U.S. Highway 20.

South Zone: The remainder of Iowa.

Kentucky: Western Zone: That portion of the State west of a line beginning at the Tennessee State line at Fulton and extending north along the Purchase Parkway to Interstate Highway 24, east along I–24 to U.S. Highway 641, north

along U.S. 641 to U.S. 60, northeast along U.S. 60 to the Henderson County line, then south, east, and northerly along the Henderson County line to the Indiana State line.

Ballard Reporting Area: That area encompassed by a line beginning at the northwest city limits of Wickliffe in Ballard County and extending westward to the middle of the Mississippi River, north along the Mississippi River and along the low-water mark of the Ohio River on the Illinois shore to the Ballard-McCracken County line, south along the county line to Kentucky Highway 358, south along Kentucky 358 to U.S. Highway 60 at LaCenter; then southwest along U.S. 60 to the northeast city limits of Wickliffe.

Henderson-Union Reporting Area: Henderson County and that portion of Union County within the Western Zone.

Pennyroyal/Coalfield Zone: Butler, Daviess, Ohio, Simpson, and Warren Counties and all counties lying west to the boundary of the Western Goose Zone.

Michigan: MVP Zone: The MVP Zone consists of an area north and west of the point beginning at the southwest corner of Branch county, north continuing along the western border of Branch and Calhoun counties to the northwest corner of Calhoun county, then easterly to the southwest corner of Eaton county, then northerly to the southern border of Ionia County, then easterly to the southwest corner of Clinton County, then northerly along the western border of Clinton County continuing northerly along the county border of Gratiot and Montcalm Counties to the southern border of Isabella County, then easterly to the southwest corner of Midland County, then northerly along the west Midland County border to Highway M–20, then easterly to U.S. Highway 10, then easterly to U.S. Interstate 75/U.S. Highway 23, then northerly along I–75/U.S. 23 to the U.S. 23 exit at Standish, then easterly on U.S. 23 to the centerline of the Au Gres River, then southerly along the centerline of the Au Gres River to Saginaw Bay, then on a line directly east 10 miles into Saginaw Bay, and from that point on a line directly northeast to the Canadian border.

SJBP Zone is the rest of the State, that area south and east of the boundary described above.

Tuscola/Huron Goose Management Unit (GMU): Those portions of Tuscola and Huron Counties bounded on the south by Michigan Highway 138 and Bay City Road, on the east by Colwood and Bay Port Roads, on the north by Kilmanagh Road and a line extending directly west off the end of Kilmanagh Road into Saginaw Bay to the west boundary, and on the west by the Tuscola-Bay County line and a line extending directly north off the end of the Tuscola-Bay County line into Saginaw Bay to the north boundary.

Allegan County GMU: That area encompassed by a line beginning at the junction of 136th Avenue and Interstate Highway 196 in Lake Town Township and extending easterly along 136th Avenue to Michigan Highway 40, southerly along Michigan 40 through the city of Allegan to 108th Avenue in Trowbridge Township, westerly along 108th Avenue to 46th Street, northerly ½ mile along 46th Street to 109th Avenue, westerly along 109th Avenue to I–196 in Casco Township, then northerly along I–196 to the point of beginning.

Saginaw County GMU: That portion of Saginaw County bounded by Michigan Highway 46 on the north; Michigan 52 on the west; Michigan 57 on the south; and Michigan 13 on the east.

Muskegon Wastewater GMU: That portion of Muskegon County within the boundaries of the Muskegon County wastewater system, east of the Muskegon State Game Area, in sections 5, 6, 7, 8, 17, 18, 19, 20, 29, 30, and 32, T10N R14W, and sections 1, 2, 10, 11, 12, 13, 14, 24, and 25, T10N R15W, as posted.

Special Canada Goose Seasons: Southern Michigan GMU: That portion of the State, including the Great Lakes and interconnecting waterways and excluding the Allegan County GMU, south of a line beginning at the Ontario border at the Bluewater Bridge in the city of Port Huron and extending westerly and southerly along Interstate Highway 94 to I–69, westerly along I–69 to Michigan Highway 21, westerly along Michigan 21 to I–96, northerly along I–96 to I–196, westerly along I–196 to Lake Michigan Drive (M–45) in Grand Rapids, westerly along Lake Michigan Drive to the Lake Michigan shore, then directly west from the end of Lake Michigan Drive to the Wisconsin State line.

Central Michigan GMU: That portion of the Lower Peninsula north of the Southern Michigan GMU but south of a line beginning at the Wisconsin State line in Lake Michigan due west of the mouth of Stony Creek in Oceana County; then due east to, and easterly and southerly along the south shore of Stony Creek to Scenic Drive, easterly and southerly along Scenic Drive to Stony Lake Road, easterly along Stony Lake and Garfield Roads to Michigan Highway 20, easterly along Michigan 20 to U.S. Highway 10 Business Route (BR) in the city of Midland, easterly along U.S. 10 BR to U.S. 10, easterly along U.S. 10 to Interstate Highway 75/U.S. Highway 23, northerly along I–75/U.S. 23 to the U.S. 23 exit at Standish, easterly along U.S. 23 to the centerline of the Au Gres River, then southerly along the centerline of the Au Gres River to Saginaw Bay, then on a line directly east 10 miles into Saginaw Bay, and from that point on a line directly northeast to the Canadian border, excluding the Tuscola/Huron GMU, Saginaw County GMU, and Muskegon Wastewater GMU.

Minnesota: West Zone: That portion of the State encompassed by a line beginning at the junction of State Trunk Highway (STH) 60 and the Iowa State line, then north and east along STH 60 to U.S. Highway 71, north along U.S. 71 to Interstate Highway 94, then north and west along I–94 to the North Dakota State line.

West Central Zone: That area encompassed by a line beginning at the intersection of State Trunk Highway (STH) 29 and U.S. Highway 212 and extending west along U.S. 212 to U.S. 59, south along U.S. 59 to STH 67, west along STH 67 to U.S. 75, north along U.S. 75 to County State Aid Highway (CSAH) 30 in Lac qui Parle County, west along CSAH 30 to the western boundary of the State, north along the western boundary of the State to a point due south of the intersection of STH 7 and CSAH 7 in Big Stone County, and continuing due north to said intersection, then north along CSAH 7 to CSAH 6 in Big Stone County, east along CSAH 6 to CSAH 21 in Big Stone County, south along CSAH 21 to CSAH 10 in Big Stone County, east along CSAH 10 to CSAH 22 in Swift County, east along CSAH 22 to CSAH 5 in Swift County, south along CSAH 5 to U.S. 12, east along U.S. 12 to CSAH 17 in Swift County, south along CSAH 17 to CSAH 9 in Chippewa County, south along CSAH 9 to STH 40, east along STH 40 to STH 29, then south along STH 29 to the point of beginning.

Northwest Zone: That portion of the State encompassed by a line extending east from the North Dakota State line along U.S. Highway 2 to State Trunk Highway (STH) 32, north along STH 32 to STH 92, east along STH 92 to County State Aid Highway (CSAH) 2 in Polk County, north along CSAH 2 to CSAH 27 in Pennington County, north along CSAH 27 to STH 1, east along STH 1 to CSAH 28 in Pennington County, north along CSAH 28 to CSAH 54 in Marshall County, north along CSAH 54 to CSAH 9 in Roseau County, north along CSAH 9 to STH 11, west along STH 11 to STH

310, and north along STH 310 to the Manitoba border.

Special Canada Goose Seasons: Southeast Zone: That part of the State within the following described boundaries: beginning at the intersection of U.S. Highway 52 and the south boundary of the Twin Cities Metro Canada Goose Zone; thence along the U.S. Highway 52 to State Trunk Highway (STH) 57; thence along STH 57 to the municipal boundary of Kasson; thence along the municipal boundary of Kasson County State Aid Highway (CSAH) 13, Dodge County; thence along CSAH 13 to STH 30; thence along STH 30 to U.S. Highway 63; thence along U.S. Highway 63 to the south boundary of the State; thence along the south and east boundaries of the State to the south boundary of the Twin Cities Metro Canada Goose Zone; thence along said boundary to the point of beginning.

Missouri: Same zones as for ducks but in addition:

Middle Zone:

Southeast Zone: That portion of the State encompassed by a line beginning at the intersection of Missouri Highway (MO) 34 and Interstate 55 and extending south along I–55 to U.S. Highway 62, west along U.S. 62 to MO 53, north along MO 53 to MO 51, north along MO 51 to U.S. 60, west along U.S. 60 to MO 21, north along MO 21 to MO 72, east along MO 72 to MO 34, then east along MO 34 to I–55.

Ohio: Same zones as for ducks but in addition:

North Zone:

Lake Erie SJBP Zone: That portion of the State encompassed by a line beginning in Lucas County at the Michigan State line on I–75, and extending south along I–75 to I–280, south along I–280 to I–80, east along I–80 to the Pennsylvania State line in Trumbull County, north along the Pennsylvania State line to SR 6 in Ashtabula County, west along SR 6 to the Lake/Cuyahoga County line, north along the Lake/Cuyahoga County line to the shore of Lake Erie.

Tennessee: Southwest Zone: That portion of the State south of State Highways 20 and 104, and west of U.S. Highways 45 and 45W.

Northwest Zone: Lake, Obion, and Weakley Counties and those portions of Gibson and Dyer Counties not included in the Southwest Tennessee Zone.

Kentucky/Barkley Lakes Zone: That portion of the State bounded on the west by the eastern boundaries of the Northwest and Southwest Zones and on the east by State Highway 13 from the Alabama State line to Clarksville and U.S. Highway 79 from Clarksville to the Kentucky State line.

Wisconsin: Same zones as for ducks but in addition:

Horicon Zone: That area encompassed by a line beginning at the intersection of State Highway 21 and the Fox River in Winnebago County and extending westerly along State 21 to the west boundary of Winnebago County, southerly along the west boundary of Winnebago County to the north boundary of Green Lake County, westerly along the north boundaries of Green Lake and Marquette Counties to State 22, southerly along State 22 to State 33, westerly along State 33 to Interstate Highway 39, southerly along Interstate Highway 39 to Interstate Highway 90/94, southerly along I–90/94 to State 60, easterly along State 60 to State 83, northerly along State 83 to State 175, northerly along State 175 to State 33, easterly along State 33 to U.S. Highway 45, northerly along U.S. 45 to the east shore of the Fond Du Lac River, northerly along the east shore of the Fond Du Lac River to Lake Winnebago, northerly along the western shoreline of Lake Winnebago to the Fox River, then westerly along the Fox River to State 21.

Collins Zone: That area encompassed by a line beginning at the intersection of Hilltop Road and Collins Marsh Road in Manitowoc County and extending westerly along Hilltop Road to Humpty Dumpty Road, southerly along Humpty Dumpty Road to Poplar Grove Road, easterly and southerly along Poplar Grove Road to County Highway JJ, southeasterly along County JJ to Collins Road, southerly along Collins Road to the Manitowoc River, southeasterly along the Manitowoc River to Quarry Road, northerly along Quarry Road to Einberger Road, northerly along Einberger Road to Moschel Road, westerly along Moschel Road to Collins Marsh Road, northerly along Collins Marsh Road to Hilltop Road.

Exterior Zone: That portion of the State not included in the Horicon or Collins Zones.

Mississippi River Subzone: That area encompassed by a line beginning at the intersection of the Burlington Northern & Santa Fe Railway and the Illinois State line in Grant County and extending northerly along the Burlington Northern & Santa Fe Railway to the city limit of Prescott in Pierce County, then west along the Prescott city limit to the Minnesota State line.

Rock Prairie Subzone: That area encompassed by a line beginning at the intersection of the Illinois State line and Interstate Highway 90 and extending north along I–90 to County Highway A, east along County A to U.S. Highway 12, southeast along U.S. 12 to State Highway 50, west along State 50 to State 120, then south along 120 to the Illinois State line.

Brown County Subzone: That area encompassed by a line beginning at the intersection of the Fox River with Green Bay in Brown County and extending southerly along the Fox River to State Highway 29, northwesterly along State 29 to the Brown County line, south, east, and north along the Brown County line to Green Bay, due west to the midpoint of the Green Bay Ship Channel, then southwesterly along the Green Bay Ship Channel to the Fox River.

Central Flyway

Colorado (Central Flyway Portion): Northern Front Range Area: All lands in Adams, Boulder, Clear Creek, Denver, Gilpin, Jefferson, Larimer, and Weld Counties west of I–25 from the Wyoming State line south to I–70; west on I–70 to the Continental Divide; north along the Continental Divide to the Jackson-Larimer County Line to the Wyoming State line.

South Park/San Luis Valley Area: Alamosa, Chaffee, Conejos, Costilla, Custer, Fremont, Lake, Park, Teller, and Rio Grande Counties and those portions of Hinsdale, Mineral, and Saguache Counties east of the Continental Divide.

North Park Area: Jackson County.

Arkansas Valley Area: Baca, Bent, Crowley, Kiowa, Otero, and Prowers Counties.

Pueblo County Area: Pueblo County.

Remainder: Remainder of the Central Flyway portion of Colorado.

Eastern Colorado Late Light Goose Area: that portion of the State east of Interstate Highway 25.

Nebraska:

Dark Geese:

Niobrara Unit: Keya Paha County east of U.S. 183 and all of Boyd County, including the boundary waters of the Niobrara River. Where the Niobrara River forms the boundary, both banks will be in the Niobrara Unit.

East Unit: That area north and east of U.S. 281 at the Kansas/Nebraska State line, north to Giltner Road (near Doniphan), east to NE 14, north to NE 66, east to U.S. 81, north to NE 22, west to NE 14, north to NE 91, east to U.S. 275, south to U.S. 77, south to NE 91, east to U.S. 30, east to Nebraska-Iowa State line.

Platte River Unit: That area south and west of U.S. 281 at the Kansas/Nebraska State line, north to Giltner Road (near Doniphan), east to NE 14, north to NE 66, east to U.S. 81, north to NE 22, west to NE 14, north to NE 91, west along NE 91 to NE 11, north to the Holt County line, west along the northern border of Garfield, Loup, Blaine and Thomas

Counties to the Hooker County line, south along the Thomas/Hooker County lines to the McPherson County line, east along the south border of Thomas County to the western line of Custer County, south along the Custer/Logan County line to NE 92, west to U.S. 83, north to NE 92, west to NE 61, north along NE 61 to NE 2, west along NE 2 to the corner formed by Garden—Grant—Sheridan Counties, west along the north border of Garden, Morrill and Scotts Bluff Counties to the Wyoming State line.

North-Central Unit: The remainder of the State.

Light Geese:

Rainwater Basin Light Goose Area (West): The area bounded by the junction of U.S. 283 and U.S. 30 at Lexington, east on U.S. 30 to U.S. 281, south on U.S. 281 to NE 4, west on NE 4 to U.S. 34, continue west on U.S. 34 to U.S. 283, then north on U.S. 283 to the beginning.

Rainwater Basin Light Goose Area (East): The area bounded by the junction of U.S. 281 and U.S. 30 at Grand Island, north and east on U.S. 30 to NE 92, east on NE 92 to NE 15, south on NE 15 to NE 4, west on NE 4 to U.S. 281, north on U.S. 281 to the beginning.

Remainder of State: The remainder portion of Nebraska.

New Mexico (Central Flyway Portion):

Dark Geese:

Middle Rio Grande Valley Unit: Sierra, Socorro, and Valencia Counties.

Remainder: The remainder of the Central Flyway portion of New Mexico.

South Dakota:

Canada Geese:

Unit 1: Statewide except for Units 2, 3 and 4.

Big Stone Power Plant Area: That portion of Grant and Roberts Counties east of SD 15 and north of SD 20.

Unit 2: Brule, Buffalo, Charles Mix, Gregory, Hughes, Hyde, Lyman, Potter, Stanley, and Sully Counties and that portion of Dewey County south of U.S. 212.

Unit 3: Clark, Codington, Day, Deuel, Grant, Hamlin, Marshall, and Roberts Counties.

Unit 4: Bennett County.

Texas: Northeast Goose Zone: That portion of Texas lying east and north of a line beginning at the Texas-Oklahoma border at U.S. 81, then continuing south to Bowie and then southeasterly along U.S. 81 and U.S. 287 to I–35W and I–35 to the juncture with I–10 in San Antonio, then east on I–10 to the Texas-Louisiana border.

Southeast Goose Zone: That portion of Texas lying east and south of a line beginning at the International Toll Bridge at Laredo, then continuing north following I–35 to the juncture with I–10 in San Antonio, then easterly along I–10 to the Texas-Louisiana border.

West Goose Zone: The remainder of the State.

Wyoming (Central Flyway Portion):

Dark Geese:

Area 1: Converse, Hot Springs, Natrona, and Washakie Counties, and the portion of Park County east of the Shoshone National Forest boundary and south of a line beginning where the Shoshone National Forest boundary crosses Park County Road 8VC, easterly along said road to Park County Road 1AB, easterly along said road to Wyoming Highway 120, northerly along said highway to Wyoming Highway 294, southeasterly along said highway to Lane 9, easterly along said lane to the town of Powel and Wyoming Highway 14A, easterly along said highway to the Park County and Big Horn County Line.

Area 2: Albany, Big Horn, Campbell, Crook, Fremont, Johnson, Laramie, Niobrara, Sheridan, and Weston Counties, and that portion of Carbon County east of the Continental Divide; that portion of Park County west of the Shoshone National Forest boundary, and that portion of Park County north of a line beginning where the Shoshone National Forest boundary crosses Park County Road 8VC, easterly along said road to Park County Road 1AB, easterly along said road to Wyoming Highway 120, northerly along said highway to Wyoming Highway 294, southeasterly along said highway to Lane 9, easterly along said lane to the town of Powel and Wyoming Highway 14A, easterly along said highway to the Park County and Big Horn County Line.

Area 3: Goshen and Platte Counties.

Pacific Flyway

Arizona: North Zone: Game Management Units 1–5, those portions of Game Management Units 6 and 8 within Coconino County, and Game Management units 7, 9, and 12A.

South Zone: Those portions of Game Management Units 6 and 8 in Yavapai County, and Game Management Units 10 and 12B–45.

California: Northeastern Zone: In that portion of California lying east and north of a line beginning at the intersection of the Klamath River with the California-Oregon line; south and west along the Klamath River to the mouth of Shovel Creek; along Shovel Creek to its intersection with Forest Service Road 46N05 at Burnt Camp; west to its junction with Forest Service Road 46N10; south and east to its Junction with County Road 7K007; south and west to its junction with Forest Service Road 45N22; south and west to its junction with Highway 97 and Grass Lake Summit; south along to its junction with Interstate 5 at the town of Weed; south to its junction with Highway 89; east and south along Highway 89 to main street Greenville; north and east to its junction with North Valley Road; south to its junction of Diamond Mountain Road; north and east to its junction with North Arm Road; south and west to the junction of North Valley Road; south to the junction with Arlington Road (A22); west to the junction of Highway 89; south and west to the junction of Highway 70; east on Highway 70 to Highway 395; south and east on Highway 395 to the point of intersection with the California-Nevada state line; north along the California-Nevada state line to the junction of the California-Nevada-Oregon state lines west along the California-Oregon state line to the point of origin.

Colorado River Zone: Those portions of San Bernardino, Riverside, and Imperial Counties east of a line extending from the Nevada border south along U.S. 95 to Vidal Junction; south on a road known as "Aqueduct Road" in San Bernardino County through the town of Rice to the San Bernardino-Riverside County line; south on a road known in Riverside County as the "Desert Center to Rice Road" to the town of Desert Center; east 31 miles on I–10 to the Wiley Well Road; south on this road to Wiley Well; southeast along the Army-Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south on the Blythe-Brawley paved road to the Ogilby and Tumco Mine Road; south on this road to U.S. 80; east seven miles on U.S. 80 to the Andrade-Algodones Road; south on this paved road to the Mexican border at Algodones, Mexico.

Southern Zone: That portion of southern California (but excluding the Colorado River Zone) south and east of a line extending from the Pacific Ocean east along the Santa Maria River to CA 166 near the City of Santa Maria; east on CA 166 to CA 99; south on CA 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to CA 178 at Walker Pass; east on CA 178 to U.S. 395 at the town of Inyokern; south on U.S. 395 to CA 58; east on CA 58 to I–15; east on I–15 to CA 127; north on CA 127 to the Nevada border.

Imperial County Special Management Area: The area bounded by a line beginning at Highway 86 and the Navy Test Base Road; south on Highway 86 to the town of Westmoreland; continue through the town of Westmoreland to Route S26; east on Route S26 to Highway 115; north on Highway 115 to Weist Rd.; north on Weist Rd. to

Flowing Wells Rd.; northeast on Flowing Wells Rd. to the Coachella Canal; northwest on the Coachella Canal to Drop 18; a straight line from Drop 18 to Frink Rd.; south on Frink Rd. to Highway 111; north on Highway 111 to Niland Marina Rd.; southwest on Niland Marina Rd. to the old Imperial County boat ramp and the water line of the Salton Sea; from the water line of the Salton Sea, a straight line across the Salton Sea to the Salinity Control Research Facility and the Navy Test Base Road; southwest on the Navy Test Base Road to the point of beginning.

Balance-of-the-State Zone: The remainder of California not included in the Northeastern, Southern, and the Colorado River Zones.

Del Norte and Humboldt Area: The Counties of Del Norte and Humboldt.

Sacramento Valley Special Management Area (East): That area bounded by a line beginning at the junction of the Gridley-Colusa Highway and the Cherokee Canal; west on the Gridley-Colusa Highway to Gould Road; west on Gould Road and due west 0.75 miles directly to Highway 45; south on Highway 45 to Highway 20; east on Highway 20 to West Butte Road; north on West Butte Road to Pass Road; west on Pass Road to West Butte Road; north on West Butte Road to North Butte Road; west on North Butte Road and due west 0.5 miles directly to the Cherokee Canal; north on the Cherokee Canal to the point of beginning.

Sacramento Valley Special Management Area (West): That area bounded by a line beginning at Willows south on I–5 to Hahn Road; easterly on Hahn Road and the Grimes-Arbuckle Road to Grimes; northerly on CA 45 to the junction with CA 162; northerly on CA 45/162 to Glenn; and westerly on CA 162 to the point of beginning in Willows.

Western Canada Goose Hunt Area: That portion of the above described Sacramento Valley Area lying east of a line formed by Butte Creek from the Gridley-Colusa Highway south to the Cherokee Canal; easterly along the Cherokee Canal and North Butte Road to West Butte Road; southerly on West Butte Road to Pass Road; easterly on Pass Road to West Butte Road; southerly on West Butte Road to CA 20; and westerly along CA 20 to the Sacramento River.

Colorado (Pacific Flyway Portion): West Central Area: Archuleta, Delta, Dolores, Gunnison, LaPlata, Montezuma, Montrose, Ouray, San Juan, and San Miguel Counties and those portions of Hinsdale, Mineral, and Saguache Counties west of the Continental Divide.

State Area: The remainder of the Pacific-Flyway Portion of Colorado.

Idaho: Zone 1: Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce, and Shoshone Counties.

Zone 2: The Counties of Ada; Adams; Boise; Canyon; those portions of Elmore north and east of I–84, and south and west of I–84, west of ID 51, except the Camas Creek drainage; Gem; Owyhee west of ID 51; Payette; Valley; and Washington.

Zone 3: The Counties of Blaine; Camas; Cassia; those portions of Elmore south of I–84 east of ID 51, and within the Camas Creek drainage; Gooding; Jerome; Lincoln; Minidoka; Owyhee east of ID 51; Power within the Minidoka National Wildlife Refuge; and Twin Falls.

Zone 4: The Counties of Bear Lake; Bingham within the Blackfoot Reservoir drainage; Bonneville, Butte; Caribou except the Fort Hall Indian Reservation; Clark; Custer; Franklin; Fremont; Jefferson; Lemhi; Madison; Oneida; Power west of ID 37 and ID 39 except the Minidoka National Wildlife Refuge; and Teton.

Zone 5: All lands and waters within the Fort Hall Indian Reservation, including private inholdings; Bannock County; Bingham County, except that portion within the Blackfoot Reservoir drainage; and Power County east of ID 37 and ID 39.

In addition, goose frameworks are set by the following geographical areas:

Northern Unit: Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce, and Shoshone Counties.

Southwestern Unit: That area west of the line formed by U.S. 93 north from the Nevada State line to Shoshone, northerly on ID 75 (formerly U.S. 93) to Challis, northerly on U.S. 93 to the Montana State line (except the Northern Unit and except Custer and Lemhi Counties).

Southeastern Unit: That area east of the line formed by U.S. 93 north from the Nevada State line to Shoshone, northerly on ID 75 (formerly U.S. 93) to Challis, northerly on U.S. 93 to the Montana State line, including all of Custer and Lemhi Counties.

Montana (Pacific Flyway Portion): East of the Divide Zone: The Pacific Flyway portion of the State located east of the Continental Divide.

West of the Divide Zone: The remainder of the Pacific Flyway portion of Montana.

Nevada: Lincoln Clark County Zone: All of Lincoln and Clark Counties.

Remainder-of-the-State Zone: The remainder of Nevada.

New Mexico (Pacific Flyway Portion): North Zone: The Pacific Flyway portion of New Mexico located north of I–40.

South Zone: The Pacific Flyway portion of New Mexico located south of I–40.

Oregon: Southwest Zone: Douglas, Coos, Curry, Josephine, and Jackson Counties.

Northwest Special Permit Zone: That portion of western Oregon west and north of a line running south from the Columbia River in Portland along I–5 to OR 22 at Salem; then east on OR 22 to the Stayton Cutoff; then south on the Stayton Cutoff to Stayton and due south to the Santiam River; then west along the north shore of the Santiam River to I–5; then south on I–5 to OR 126 at Eugene; then west on OR 126 to Greenhill Road; then south on Greenhill Road to Crow Road; then west on Crow Road to Territorial Hwy; then west on Territorial Hwy to OR 126; then west on OR 126 to OR 36; then north on OR 36 to Forest Road 5070 at Brickerville; then west and south on Forest Road 5070 to OR 126; then west on OR 126 to Milepost 19, north to the intersection of the Benton and Lincoln County line, north along the western boundary of Benton and Polk Counties to the southern boundary of Tillamook County, west along the Tillamook County boundary to the Pacific Coast.

Lower Columbia/N. Willamette Valley Management Area: Those portions of Clatsop, Columbia, Multnomah, and Washington Counties within the Northwest Special Permit Zone.

Northwest Zone: Those portions of Clackamas, Lane, Linn, Marion, Multnomah, and Washington Counties outside of the Northwest Special Permit Zone and all of Lincoln County.

Closed Zone: Those portions of Coos and Curry Counties south of Bandon and west of U.S. 101 and all of Tillamook and Lincoln Counties.

Eastern Zone: Hood River, Wasco, Sherman, Gilliam, Morrow, Umatilla, Deschutes, Jefferson, Crook, Wheeler, Grant, Baker, Union, and Wallowa Counties.

Harney, Klamath, Lake, and Malheur County Zone: All of Harney, Klamath, Lake, and Malheur Counties.

Utah: Washington County Zone: All of Washington County.

Remainder-of-the-State Zone: The remainder of Utah.

Washington: Area 1: Skagit, Island, and Snohomish Counties.

Area 2A (SW Quota Zone): Clark County, except portions south of the Washougal River; Cowlitz, and Wahkiakum Counties.

Area 2B (SW Quota Zone): Pacific and Grays Harbor Counties.

Area 3: All areas west of the Pacific Crest Trail and west of the Big White Salmon River that are not included in Areas 1, 2A, and 2B.

Area 4: Adams, Benton, Chelan, Douglas, Franklin, Grant, Kittitas, Lincoln, Okanogan, Spokane, and Walla Walla Counties.

Area 5: All areas east of the Pacific Crest Trail and east of the Big White Salmon River that are not included in Area 4.

Wyoming (Pacific Flyway Portion): See State Regulations.

Bear River Area: That portion of Lincoln County described in State regulations.

Salt River Area: That portion of Lincoln County described in State regulations.

Eden-Farson Area: Those portions of Sweetwater and Sublette Counties described in State regulations.

Swans

Central Flyway

South Dakota: Aurora, Beadle, Brookings, Brown, Brule, Buffalo, Campbell, Clark, Codington, Davison, Deuel, Day, Edmunds, Faulk, Grant, Hamlin, Hand, Hanson, Hughes, Hyde, Jerauld, Kingsbury, Lake, Marshall, McCook, McPherson, Miner, Minnehaha, Moody, Potter, Roberts, Sanborn, Spink, Sully, and Walworth Counties.

Pacific Flyway

Montana (Pacific Flyway Portion): Open Area: Cascade, Chouteau, Hill, Liberty, and Toole Counties and those portions of Pondera and Teton Counties lying east of U.S. 287–89.

Nevada: Open Area: Churchill, Lyon, and Pershing Counties.

Utah: Open Area: Those portions of Box Elder, Weber, Davis, Salt Lake, and Toole Counties lying west of I–15, north of I–80 and south of a line beginning from the Forest Street exit to the Bear River National Wildlife Refuge boundary, then north and west along the Bear River National Wildlife Refuge boundary to the farthest west boundary of the Refuge, then west along a line to Promontory Road, then north on Promontory Road to the intersection of SR 83, then north on SR 83 to I–84, then north and west on I–84 to State Hwy 30, then west on State Hwy 30 to the Nevada-Utah State line, then south on the Nevada-Utah State line to I–80.

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H.R. 4842/P.L. 108–302

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108th Congress

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