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3–10–04 Wednesday
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**Reader Aids**
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

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## CFR PARTS AFFECTED IN THIS ISSUE

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

# Rules and Regulations

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

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## DEPARTMENT OF HOMELAND SECURITY

**8 CFR Part 214**

**[CIS No. 2266–03]**

**RIN 1615–AA96**

## Eliminating the Numerical Cap on Mexican TN Nonimmigrants

**AGENCY:** Department of Homeland Security.

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

**SUMMARY:** This rule removes the annual numerical cap on the number of Mexican professional admissions under the North American Free Trade Agreement (NAFTA). This rule also eliminates the associated requirement of a petition for a Mexican-based NAFTA professional and the corresponding labor condition application. These changes to the regulations are consistent with the NAFTA's requirement that the annual numerical cap and petition provisions for Mexican professionals sunset by January 1, 2004. Note that on March 1, 2003, the Immigration and Naturalization Service (Service) transferred from the Department of Justice to the Department of Homeland Security (the Department) pursuant to the Homeland Security Act of 2002, Public Law 107–296. Accordingly, the Service's adjudication function transferred to the Bureau of Citizenship and Immigration Services (BCIS) of the Department.

**DATES:** *Effective date.* This interim rule is effective on January 1, 2004.

*Comment date.* Written comments must be submitted on or before May 10, 2004.

**ADDRESSES:** Please submit written comments to the Director, Regulations and Forms Services Division, Department of Homeland Security, 425 I Street, NW., Room 4034, Washington, DC 20536. To ensure proper handling, please reference CIS No. 2266–03 on your correspondence. Comments may also be submitted electronically to the Department at *rfs.regs.@dhs.gov*. When submitting comments electronically, you must include CIS No. 2266–03 in the subject box so that the comments can be electronically routed to the appropriate office for review. Comments may be inspected at the above address by calling (202) 514–3291 to arrange for an appointment.

**FOR FURTHER INFORMATION CONTACT:** Craig Howie, Staff Officer, Business and Trade Services Branch, Program and Regulations Development, Bureau of Citizenship and Immigration Services, Department of Homeland Security, 425 I Street, NW., ULLICO—3rd Floor, Washington, DC 20536, telephone (202) 514–3228.

**SUPPLEMENTARY INFORMATION:**

### What Is the NAFTA?

On December 17, 1992, The United States, Canada and Mexico signed the North American Free Trade Agreement (NAFTA). The NAFTA entered into force on January 1, 1994, creating one of the largest trade areas in the world. Under the terms of the agreement, NAFTA allows for the temporary entry of qualified businesspersons from each of the parties to the agreement. Chapter 16 of the NAFTA is entitled A Temporary Entry of Business Persons, and in addition to reflecting the preferential trading relationship between the parties to the agreement, it reflects the member nations' desire to facilitate temporary entry on a reciprocal basis. It also establishes procedures for temporary entry, addresses the need to ensure border security and seeks to protect the domestic labor force in the member nations.

Chapter 16 of the NAFTA and Annex 1603 to Article 1603 of the NAFTA established four categories of businesspersons to be allowed temporary entry into the territory of another NAFTA party. The four categories are: (1) Business visitors; (2) traders and investors; (3) intra-company transferees; and (4) professionals.

Business visitors under the NAFTA are admitted to the United States under the B–1 nonimmigrant classification (section 101(a)(15)(B) of the Immigration and Nationality Act (Act)). A business visitor is a businessperson from another NAFTA party who seeks to engage in an occupation or profession with one of the seven categories of business activities listed in Appendix 1603.A.1. The seven categories of business activities listed in Appendix 1603.A.1 represent a complete business cycle and include: (1) Research and Design; (2) Growth, Manufacture and Production; (3) Marketing; (4) Sales; (5) Distribution; (6) After-Sales Service; and (7) General Service.

Traders and investors are admitted to the United States under the E–1 and E–2 nonimmigrant categories, respectively, under section 101(a)(15)(E) of the Act. A trader is an alien in the United States admitted soley to carry on trade of a substantial nature principally between the United States and the country of the alien's nationality. An investor is an alien who has invested or is actively in the process of investing a substantial amount of capital in a bona fide enterprise in the United States.

Intra-company transferees are admitted to the United States under the L–1 nonimmigrant classification (section 101(a)(15)(L) of the Act). An intra-company transferee is an alien who, within 3 years preceding the time of his or her application for admission into the United States, has been employed abroad continuously for 1 year by a firm or corporation or other legal entity or parent, branch, affiliate, or subsidiary, and who seeks to enter the United States temporarily to render his or her services to a branch of the same employer or as parent, affiliate, or subsidiary thereof in a capacity that is managerial, executive, or involves specialized knowledge.

Professionals under the NAFTA are admitted to the United States as Trade NAFTA (TN) nonimmigrant aliens under section 214(e) of the Act.

### What Is a TN Nonimmigrant Alien?

A TN nonimmigrant alien is a citizen of Canada or Mexico who seeks admission to the United States, under the provisions of Section D of Annex 1603 of the NAFTA, to engage in business activities at a professional level as provided for in such annex. The NAFTA parties have agreed that 63 occupations qualify as professions. These occupations are listed in the Appendix 1603.D.1 to Annex 1603 to the NAFTA found in 8 CFR 214.6(c). The list contains the only professions in

which an alien can engage in and obtain admission to the United States as a TN nonimmigrant alien.

**What Changes Are Noted in This Rule?**

Appendix 1603.D.4 of the NAFTA, reflected in section 214(e)(4) and (5) of the Act, establishes an annual numerical ceiling of 5,500 on Mexican TN admissions. In order to accurately administer this cap, the Department has required the filing of Form I–129, Petition for Alien Worker. This rule eliminates the annual numerical cap for citizens of Mexico seeking a visa and admission as a TN nonimmigrant. Because this rule reflects the elimination of the numerical cap (as required by the provisions of the NAFTA), it will also eliminate the petition requirement, which has allowed the Department to manage the numerical limit. One requirement associated with the filing of the Form I–129 petition was the requirement of a certified labor condition application (LCA). Because the numerical cap is eliminated, these associated requirements are also eliminated.

**What Is the Current Process Used by Mexican Citizens Seeking TN Status?**

Currently, a citizen of Mexico seeking to come to the U.S. as a TN nonimmigrant must have had submitted to the Department, on his or her behalf, a Form I–129, Petition for Nonimmigrant Worker. In order to properly file Form I–129 with the Department, an LCA must first be certified by the Department of Labor (DOL). Upon approval of the petition by the Department, the Mexican citizen must then apply to the United States Department of State (DOS) for a visa.

**How Will the Process Used by Mexican Citizens Seeking TN Status Change?**

This rule eliminates the petition and LCA requirement. Rather than make application to the DOL and the Department, a Mexican citizen wishing to come to the U.S. in TN classification must apply directly to the DOS for a visa. DOS will adjudicate the alien's eligibility for TN classification, and upon approval and issuance of a visa the alien may apply for admission to the United States. While the Department will no longer collect a fee associated with the filing of Form I–129 since it is no longer required, the DOS may collect fees prescribed by their Secretary as consistent with the NAFTA.

**Why Are These Changes Being Made?**

At the time the NAFTA was negotiated, the agreement imposed the additional controls of the cap, petition, and LCA requirement on citizens of Mexico for a temporary period. In this case, the additional controls were put into place for 10 years. (These additional controls were not imposed on Canadian citizens.) Since the 10-year period will end on January 1, 2004, the Department will fulfill its obligations under the NAFTA by eliminating these requirements from its regulations.

**Will Extension Requests and Requests for a Change of Employer Continue To Require a Form I–129 Petition and LCA?**

As is currently the case, requests for an extension of stay and requests to add or change employers must be submitted on Form I–129. However, no LCA will be required in order to obtain an extension. It should be noted that the extension request made on Form I–129 is not a petition for status within the meaning of section 214(c)(1) of the Act and does not confer any of the appeal rights normally associated with a petition. Form I–129 is required to obtain an extension of stay. The Form I–129 in the context of an application for extension of stay is merely the vehicle by which the Department collects the information needed to make a determination on the extension application. Under 8 CFR 214.1(c)(5), there is no appeal of a denial of an application for extension of stay.

**Must a Mexican TN Applicant for Admission Obtain a Visa?**

Yes. The consular office will make a determination as to whether the alien is eligible for the TN classification and issuance of visa. This determination replaces the former role of the Department in adjudicating the Form I–129 petition. Because the NAFTA does not change the requirement of a valid visa for a citizen of Mexico, this rule retains the existing requirement of a valid passport for Mexican TN's.

**Request for Comments**

The Department of Homeland Security is seeking public comment regarding this interim rule. In particular, the Department is interested in comments addressing the lifting of the petition and labor certification requirements for Mexican citizens desiring TN status in the United States.

**Good Cause Exception**

The Department's implementation of this rule as an interim rule, with provisions for post-promulgation public comments, is based on the "good cause" exceptions found at 5 U.S.C. 553(b)(B) and (d)(3). The reasons and necessity for the promulgation of this rule on January 1, 2004, are as follows: This rule is necessary to ensure that the Department is in compliance with the requirements placed upon the signatory nations that are parties to the NAFTA. As previously noted in this interim rule, the NAFTA requires the lifting of the annual cap of 5,500 Mexican TN professionals no longer than 10 years after the date the NAFTA became effective. Therefore, regardless of whether the Department promulgates regulations, the annual cap of Mexican TN professionals will sunset on January 1, 2004. By eliminating the cap and petition requirements now, the Executive Branch of the Federal Government will be in compliance with this requirement made by the NAFTA.

Adoption of this rule as an interim rule acknowledges the importance of equal treatment for both the Canadian and Mexican governments. In addition, the provisions of this interim rule will not have a negative affect on any qualified Mexican citizen seeking TN status, nor will it affect the qualified United States employer. The rule will eliminate one portion of the administrative process by which a qualified Mexican citizen may obtain TN status.

Accordingly, the Department believes that advance public notice and comment of this regulation is impracticable and contrary to the public interest. Therefore, there is good cause under 5 U.S.C. 553(b) and (d) for dispensing with the requirements of prior notice and to make this rule effective on January 1, 2004.

**Regulatory Flexibility Act**

I have reviewed this rule, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) and, by approving it, I certify that this rule will not have a significant economic impact on a substantial number of small entities. This rule affects only TN nonimmigrant individuals. These nonimmigrants are not considered small entities as that term is defined in 5 U.S.C. 601(6). This rule also affects U.S. employers of TN nonimmigrants, but does not create any new economic or procedural burdens for those entities. Although some petitioning businesses may be considered small businesses, this rule merely simplifies applicable procedures and eliminates certain filing requirements that in all likelihood will have a positive impact.

**Unfunded Mandates Reform Act of 1995**

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more

in any one-year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

**Small Business Regulatory Enforcement Fairness Act of 1996**

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

**Executive Order 12866**

This rule is considered by the Department of Homeland Security to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this rule has been submitted to the Office of Management and Budget (OMB) for review.

In particular, the Department has assessed both the costs and benefits of this rule as required by Executive Order 12866, section 1(b)(6) and has made a reasoned determination that the benefits of this regulation justify its costs. Briefly, that assessment is as follows. This rule eliminates the numerical cap on TN admissions and eliminates certain filing requirements. This will eliminate the time and expense associated with these forms, and will also reduce the processing and waiting times associated with obtaining TN classification.

**Executive Order 13132**

This 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. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

**Executive Order 12988 Civil Justice Reform**

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

**Paperwork Reduction Act**

Under the Paperwork Reduction Act of 1995, Public Law 104–13, all Departments are required to submit to the Office of Management and Budget (OMB), for review and approval, any reporting or recordkeeping requirements inherent in a rule. This rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act.

**List of Subjects in 8 CFR Part 214**

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

■ Accordingly, part 214 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

## PART 214—NONIMMIGRANT CLASSES

■ 1. The authority citation for part 214 continues to read as follows:

**Authority:** 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282, 1301–1305 and 1372; sec. 643, Pub. L. 104–208, 110 Stat. 3009–708; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901 note, and 1931 note, respectively; 8 CFR part 2.

■ 2. Section 214.6 is amended by:
■ a. Revising the section heading;
■ b. Revising paragraph (d);
■ c. Revising paragraph (e);
■ d. Removing and reserving paragraph (f);
■ e. Revising paragraph (h);
■ f. Revising paragraph (i); and
■ g. Removing paragraph (l).

The revisions read as follows:

**§ 214.6 Citizens of Canada or Mexico seeking temporary entry under NAFTA to engage in business activities at a professional level.**

* * * * *

(d) *Classification of citizens of Canada or Mexico as TN professionals under the NAFTA*—(1) *Citizens of Mexico.* A citizen of Mexico who seeks temporary entry as a business person to engage in business activities at a professional level may be admitted to the United States in accordance with NAFTA upon presentation of a valid passport and valid TN nonimmigrant visa at a United States Class A port-of-entry, at a United States airport handling international traffic, or at a United States pre-clearance/pre-flight station.

(2) *Citizens of Canada.* A citizen of Canada seeking temporary entry as a business person to engage in business activities at a professional level shall make application for admission with a Department officer at the United States Class A port-of-entry, at a United States airport handling international traffic, or at a United States pre-clearance/pre-flight station.

(3) *Documentation.* Upon application for a visa at a United States consular office, or, in the case of a citizen of Canada making application for admission at a port-of-entry, an applicant under this section shall present the following:

(i) *Proof of citizenship.* A Mexican citizen applying for admission as a TN nonimmigrant must establish such citizenship by presenting a valid passport. Canadian citizens, while not required to present a valid passport for admission unless traveling from outside the Western hemisphere, must establish Canadian citizenship.

(ii) *Documentation demonstrating engagement in business activities at a professional level and demonstrating professional qualifications.* The applicant must present documentation sufficient to satisfy the consular officer (in the case of a Mexican citizen) or the Department officer (in the case of a Canadian citizen) that the applicant is seeking entry to the United States to engage in business activities for a United States employer(s) or entity(ies) at a professional level, and that the applicant meets the criteria to perform at such a professional level. This documentation may be in the form of a letter from the prospective employer(s) in the United States or from the foreign employer, and must be supported by diplomas, degrees or membership in a professional organization. Degrees received by the applicant from an educational institution not located within Canada, Mexico, or the United States must be accompanied by an evaluation by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials. The documentation shall fully affirm:

(A) The Appendix 1603.D.1 profession of the applicant;

(B) A description of the professional activities, including a brief summary of daily job duties, if appropriate, in which the applicant will engage in for the United States employer/entity;

(C) The anticipated length of stay;

(D The educational qualifications or appropriate credentials which demonstrate that the Canadian or Mexican citizen has professional level status; and

(E) The arrangements for remuneration for services to be rendered.

(e) *Procedures for admission for a citizen of Canada or Mexico*—A citizen of Canada or Mexico who qualifies for admission under this section shall be provided confirming documentation (Form I–94) and shall be admitted under the classification symbol TN for a period not to exceed one year. Form I–94 shall bear the legend "multiple entry". The fee prescribed under 8 CFR 103.7(b)(1) shall be remitted by Canadian Citizens upon admission to the United States pursuant to the terms and conditions of the NAFTA. Upon remittance of the prescribed fee, the TN applicant for admission shall be provided a Department-issued receipt (Form G–211, Form G–711, or Form I–797).

(f) Reserved.

* * * * *

(h) *Extension of stay*—(1) *Filing at the service center.* The United States employer of a citizen of Canada or Mexico in TN status or a United States entity, in the case of a citizen of Canada or Mexico in TN status who has a foreign employer, may request an extension of stay by filing Form I–129 with the prescribed fee noted at 8 CFR 103.7(b)(1), with the Nebraska Service Center. The beneficiary must be physically present in the United States at the time of the filing of the extension of stay. If the alien is required to leave the United States for any reasons while the extension request is pending, the petitioner, in the case of a Mexican citizen TN beneficiary, may request the director to cable notification of approval to the consular office abroad where the Mexican TN beneficiary will apply for a visa. In the case of a Canadian TN beneficiary, the petitioner may request the director to cable notification of approval of the application to the port-of-entry where the Canadian TN beneficiary will apply for admission to the United States. If approved, an extension of stay may be authorized for up to one year. There is no specific limit on the total period of time an alien may remain in TN status.

(2) *Readmission at the border.* Nothing in paragraph (h)(1) of this section shall preclude a citizen of Canada or Mexico who has previously been in the United States in TN status from applying for admission for a period of time that extends beyond the date of his or her original term of admission at any United States port-of-entry. The application for admission shall be supported by a new letter from the United States employer or the foreign employer, in the case of a citizen of Canada who is providing prearranged services to a United States entity, which meets the requirements of paragraph (e) of this section. The fee prescribed under 8 CFR 103.7(b)(1) shall be remitted by Canadian citizens upon admission to the United states pursuant to the terms and conditions of the NAFTA. Citizens of Mexico must present a valid passport and nonimmigrant TN visa when applying for readmission, as outlined in paragraph (d)(1) of this section.

(i) *Request for change or addition of United States employers*—(1) *Filing at the service center.* A citizen of Canada or Mexico admitted into the United States as a TN nonimmigrant who seeks to change or add a United States employer during the period of admission must have the new employer file a Form I–129 with appropriate supporting documentation, including a letter from the new employer describing the services to be performed, the time needed to render such services, and the terms of remuneration for services. Employment with a different or with an additional employer is not authorized prior to Department approval of the request.

(2) *Readmission at the border.* Nothing in paragraph (i)(1) of those section precludes a citizen of Canada or Mexico from applying for readmission to the United States for the purpose of presenting documentation from a different or additional United States or foreign employer. Such documentation shall meet the requirements prescribed in paragraph (d) of this section. The fee prescribed under 8 CFR 103.7(b)(1) shall be remitted by Canadian citizens upon admission to the United States pursuant to the terms and conditions of the NAFTA. Citizens of Mexico may present documentation from a different or additional United States or foreign employer to a consular officer as evidence in support of a new nonimmigrant TN visa application.

(3) No action shall be required on the part of a citizen of Canada or Mexico in TN status who is transferred to another location by the same United States employer to perform the same services. Such an acceptable transfer would be to a branch or office of the employer. In a case of a transfer to a separately incorporated subsidiary or affiliate, the requirements of paragraphs (i)(1) and (i)(2) of this section will apply.

Dated: March 3, 2004.

**Tom Ridge,**

*Secretary of Homeland Security.*

[FR Doc. 04–5324 Filed 3–9–04; 8:45 am]

BILLING CODE 4410–10–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

[Docket No. 2004–NM–11–AD; Amendment 39–13508; AD 2004–05–13]

RIN 2120–AA64

## Airworthiness Directives; Bombardier Model DHC–8–401 and –402 Airplanes

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

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that is applicable to certain Bombardier Model DHC–8–401 and –402 airplanes. This action requires a records review to determine the repair/modification status of the airplane, and follow-on and corrective actions as necessary. This action is necessary to prevent cracks in the lower fuselage skin due to fatigue damage in the vicinity of the Number 2 VHF antenna, which could result in rapid decompression of the airplane. This action is intended to address the identified unsafe condition.

**DATES:** Effective March 25, 2004.

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

Comments for inclusion in the Rules Docket must be received on or before April 9, 2004.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2004–NM–11–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov*. Comments sent via the Internet must contain "Docket No. 2004–NM–11–AD" in the subject line and need not be submitted in triplicate. Comments sent via fax or the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in this AD may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada.

This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Westbury, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** David Lawson, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Westbury, New York 11590; telephone (516) 228–7327; fax (516) 794–5531.

**SUPPLEMENTARY INFORMATION:** Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on certain Bombardier Model DHC–8–401 and –402 airplanes. TCCA advises that, during an A-check on an affected airplane, an 8-inch crack was discovered on the fuselage skin in the vicinity of the forward Number 2 very high frequency (VHF) antenna. Further investigation revealed cracking on four of the eight cleats attaching the internal antenna support structure. Since the original report, cracked cleats were found on additional airplanes. Cracking of the fuselage skin, if not corrected, could result in rapid decompression of the airplane.

### Explanation of Relevant Service Information

Bombardier approved Repair Drawing (RD) RD8/4–53–317, Issue 2, on December 13, 2002. The RD describes procedures for a temporary repair of cracks in the right-hand forward center fuselage skin panel at stringer 32S between stations X71.8 and X94.8. The repair involves cutting away damaged skin, replacing any other damaged structure with new parts, performing a detailed inspection for any remaining cracks, installing an external repair doubler with filler, and reprotecting bare areas.

Bombardier approved Modification Summary (ModSum) Package IS4Q5300001, Revision B, on March 17, 2003. The modification involves installing an external reinforcement doubler and replacing brackets at the Number 2 VHF antenna installation.

Bombardier approved Repair Drawing RD8/4–53–328, Issue 1, approved December 13, 2002, which describes procedures for replacing the support cleats with new cleats, part number (P/N) 85307891, at stringers 32S and 33, between stations X71.8 and X94.8.

Bombardier also approved ModSum 4–113458, Revision B–1, on September 17, 2003, which describes procedures for reinforcing the Number 2 VHF antenna support structure.

Bombardier issued Service Bulletin 84–53–32, Revision "B," dated November 24, 2003, which provides instructions for incorporating Bombardier ModSum 4–113458.

Accomplishment of the applicable actions specified in the service information is intended to adequately address the identified unsafe condition. TCCA issued Canadian airworthiness directive CF–2003–28, dated November 28, 2003, to ensure the continued airworthiness of these airplanes in Canada.

### FAA's Conclusions

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCCA has kept the FAA informed of the situation described above. The FAA has examined the findings of TCCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

### Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent cracks in the lower fuselage skin due to fatigue damage in the vicinity of the Number 2 antenna, which could result in rapid decompression of the airplane. This AD requires a records review to determine repair/modification status. For airplanes on which neither Repair Drawing RD8/4–53–317 nor ModSum IS4Q5300001 has been incorporated, this AD requires repetitive detailed inspections for cracking of the external surface of the fuselage skin in the area around the Number 2 antenna and discrepancies (cracks, deformation in the area of the bend radius, and broken rivets) of the support cleats at stringers 32S and 33 between stations X71.8 and X94.8; replacement of all eight cleats with newly fabricated cleats, if any cleat is discrepant; and reinforcement of cracked fuselage skin. This AD also ultimately requires reinforcement of the Number 2 antenna support structure (and reinforcement of the fuselage skin around the Number 2 antenna, if not already done); the reinforcement actions terminate the repetitive inspections.

### Difference Between FAA and TCCA Airworthiness Directives

The Canadian airworthiness directive refers to "detailed visual inspections" for various discrepancies. We have determined that these procedures constitute "detailed inspections." Note 1 in this AD defines this type of inspection.

### Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

### Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact

concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2004–NM–11–AD." The postcard will be date stamped and returned to the commenter.

**Regulatory Impact**

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

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

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

**2004–05–13 Bombardier, Inc. (Formerly de Havilland, Inc.):** Amendment 39–13508. Docket 2004–NM–11–AD.

*Applicability:* Model DHC–8–401 and –402 airplanes, certificated in any category, serial numbers 4003 through 4076 inclusive, and 4078 through 4081 inclusive.

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

To prevent cracks in the lower fuselage skin due to fatigue damage in the vicinity of the Number 2 VHF antenna, which could result in rapid decompression of the airplane, accomplish the following:

**Records Review**

(a) Within the applicable compliance time specified in Table 1 of this AD, review the airplane maintenance records to determine if the airplane has been modified or repaired in accordance with Bombardier Repair Drawing RD8/4–53–317, Issue 2, approved December 13, 2002, or earlier issue; or Bombardier Modification Summary (ModSum) Package IS4Q5300001, Revision B, approved March 17, 2003, or earlier issue.

TABLE 1.—COMPLIANCE TIME FOR RECORDS REVIEW

| If the total flight hours accumulated on the airplane, as of the effective date of this AD, is— | Then review the records— |
|---|---|
| ≤1,450 | Before the accumulation of 1,900 total flight hours. |
| >1,450 and ≤2,200 | Within 300 flight hours after the effective date of this AD. |
| >2,200 and ≤3,000 | Within 150 flight hours after the effective date of this AD. |
| >3,000 | Within 50 flight hours after the effective date of this AD. |

**Follow-on Actions: Drawing/ModSum Incorporated**

(b) If either Bombardier Repair Drawing RD8/4–53–317 or Bombardier ModSum IS4Q5300001, as specified in paragraph (a) of this AD, has been incorporated before the effective date of this AD: Do the terminating action required by, and at the time specified in, paragraph (d) of this AD.

**Follow-on Actions: Drawing/ModSum Not Incorporated**

(c) If neither Bombardier Repair Drawing RD8/4–53–317 nor Bombardier ModSum IS4Q5300001, as specified in paragraph (a) of this AD, has been incorporated before the effective date of this AD: Before further flight, do the actions specified in paragraphs (c)(1) and (c)(2) of this AD.

(1) Perform a detailed inspection for cracking of the external surface of the fuselage skin in the area around the Number 2 VHF antenna, in accordance with Bombardier Service Bulletin 84–53–32, Revision B, dated November 24, 2003. Use a 10X magnifying glass and appropriate lighting to do the inspection.

**Note 1:** For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(i) If any crack is found: Before further flight, do the actions specified in paragraphs (c)(1)(i)(A) and (c)(1)(i)(B) of this AD.

(A) Repair in accordance with Bombardier Repair Drawing RD8/4–53–317, Issue 2, approved December 13, 2002.

(B) Replace all 8 support cleats, part number (P/N) 85307891, at stringers 32S and 33, between stations X71.8 and X94.8, in accordance with Repair Drawing RD8/4–53–328, Issue 1, approved December 13, 2002.

(ii) If no crack is found: Before further flight, do the requirements of paragraph (c)(2) of this AD.

(2) Do a detailed inspection to detect discrepancies (cracks, deformation in the area of the bend radius, and broken rivets) of the support cleats, P/N 85307891, at stringers 32S and 33, between stations X71.8 and X94.8; in accordance with Bombardier Service Bulletin 84–53–32, Revision B, dated November 24, 2003.

(i) If any discrepancy is found: Before further flight, remove the antenna and do a detailed inspection for cracks of the external surface of the fuselage skin underneath the antenna, in accordance with Bombardier Service Bulletin 84–53–32, Revision B, dated November 24, 2003. Use a 10X magnifying glass and appropriate lighting to do the inspection.

(A) If no crack is found: Before further flight, reinforce the fuselage skin around the Number 2 VHF antenna and replace all 8 support cleats with new cleats, P/N 85307891, at stringers 32S and 33, between stations X71.8 and X94.8. Do the actions in accordance with Bombardier ModSum IS4Q5300001, Revision B, approved March 17, 2003.

(B) If any crack is found: Before further flight, repair in accordance with Bombardier Repair Drawing RD8/4–53–317, Issue 2, approved December 13, 2002; and replace all 8 support cleats with new cleats, P/N 85307891, at stringers 32S and 33, between stations X71.8 and X94.8, in accordance with Bombardier Repair Drawing RD8/4–53–328, Issue 1, approved December 13, 2002.

(ii) If no discrepancy is found: Repeat the inspections required by paragraph (c)(1) of this AD at the following times, as applicable:

(A) If all 8 cleats have not been replaced: Repeat the inspections at intervals not to exceed 200 flight hours until accomplishment of the terminating action required by paragraph (d) of this AD.

(B) If all 8 cleats have been replaced: Repeat the inspections at intervals not to exceed 500 flight hours until accomplishment of the terminating action required by paragraph (d) of this AD.

**Terminating Action**

(d) Within 4,000 flight hours after the effective date of this AD, do the actions specified in paragraphs (d)(1) and (d)(2), as applicable, of this AD. Accomplishment of the applicable requirements of this paragraph terminates the repetitive inspections required by paragraph (c) of this AD.

(1) For all airplanes: Reinforce the Number 2 VHF antenna support structure in accordance with Bombardier ModSum 4–113458, Revision B–1, approved September 17, 2003. Bombardier Service Bulletin 84–53–32, Revision B, dated November 24, 2003, provides instructions for incorporating ModSum 4–113458.

(2) For airplanes on which neither Bombardier Repair Drawing RD8/4–53–317 nor Bombardier ModSum IS4Q5300001 has been incorporated: Reinforce the fuselage skin around the Number 2 VHF antenna in accordance with Bombardier ModSum IS4Q5300001, Revision B, approved March 17, 2003.

**Alternative Methods of Compliance**

(e) In accordance with 14 CFR 39.19, the Manager, New York Aircraft Certification Office (ACO), FAA, is authorized to approve alternative methods of compliance for this AD.

**Incorporation by Reference**

(f) Unless otherwise specified in this AD, the actions must be done in accordance with the Bombardier modification summary packages and repair drawings listed in Table 2 of this AD, as applicable. (The approval date of the repair drawings and modification summary packages appears only on the first page of these documents.)

TABLE 2.—APPLICABLE SERVICE DOCUMENTS

| Document | Page number | Revision level shown on the page | Date shown on the page |
|---|---|---|---|
| Bombardier Modification Summary Package IS4Q5300001. | 1–3, 6 | Revision B | March 17, 2003. |
| | 4, 5 | Revision A | December 22, 2002. |
| Bombardier Repair Drawing RD8/4–53–317 | 1, 2 | Issue 2 | December 13, 2002. |
| | 3–5 | Issue 1 | December 11, 2002. |
| Bombardier Repair Drawing RD8/4–53–328 | All | Issue 1 | December 13, 2002. |
| Bombardier Modification Summary Package 4–113458 | All | Revision B–1 | September 17, 2003. |
| Bombardier Service Bulletin 84–53–32 | All | Revision 'B' | November 24, 2003. |

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Westbury, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Note 2:** The subject of this AD is addressed in Canadian airworthiness directive CF–2003–28, dated November 28, 2003.

**Effective Date**

(g) This amendment becomes effective on March 25, 2004.

Issued in Renton, Washington, on February 25, 2004.

**Kalene C. Yanamura,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 04–4682 Filed 3–9–04; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2004–NM–20–AD; Amendment 39–13507; AD 2004–05–12]**

**RIN 2120–AA64**

## Airworthiness Directives; Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) Airplanes

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

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that is applicable to all Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. This action requires repetitive inspections of the left and right engine throttle control gearboxes for wear, and corrective action if necessary. This action is necessary to prevent excessive wear of the gearboxes and subsequent movement or jamming of the engine throttle; movement of the throttle towards the idle position brings it close to the fuel shut-off switch, which could result in an in-flight engine shutdown. This action is intended to address the identified unsafe condition.

**DATES:** Effective March 25, 2004.

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

Comments for inclusion in the Rules Docket must be received on or before April 9, 2004.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2004–NM–20–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov*. Comments sent via the Internet must contain "Docket No. 2004–NM–20–AD" in the subject line and need not be submitted in triplicate. Comments sent via fax or the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in this AD may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centreville, Montreal, Quebec H3C 3G9, Canada. This information may be

examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Westbury, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** James Delisio, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Westbury, New York 11581; telephone (516) 228–7321; fax (516) 794–5531.

**SUPPLEMENTARY INFORMATION:** Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on all Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. TCCA advises that there have been numerous failures of the engine throttle control gearbox; some of the failures resulted in an in-flight engine shutdown. Investigation revealed that when the throttle is in the climb/cruise position, the rack teeth inside the gearbox can become worn down. Such excessive wear of the engine throttle gearbox can alter the rigging position or cause the throttle to jam. Movement of the throttle towards the idle position brings it close to the fuel shut-off switch, which can cause the engine to flame out. This condition, if not corrected, could result in an in-flight engine shutdown.

### Explanation of Relevant Service Information

Bombardier has issued Service Bulletin 601R–76–019, dated August 21, 2003, which describes procedures for inspections of the left and right engine throttle control gearboxes for certain wear values, and corrective action if necessary, as specified below:

- If the wear value is equal to or less than 0.006 inch (0.152 mm) on both gearboxes, no corrective action is necessary.
- If the wear value is 0.010 inch (0.254 mm) or greater on one or both engine throttle gearboxes, the service bulletin describes procedures for replacing the affected gearbox with a new or serviceable gearbox before further flight.
- If the wear values are between 0.006 inch (0.152 mm) and 0.010 inch (0.254 mm) on both engine throttle gearboxes, the service bulletin describes procedures for replacing the gearbox having the higher wear value with a new or serviceable gearbox before further flight, and replacing the gearbox having the lower wear value with a new or serviceable gearbox within the next 1,000 flight hours.
- If the wear values are between 0.006 inch (0.152 mm) and 0.010 inch (0.254 mm), on one engine throttle gearbox only, and the wear value on the other gearbox is equal to or less than 0.006 inch (0.152mm), the service bulletin describes procedures for replacing the affected gearbox (having wear values between 0.006 inch and 0.010 inch) with a new or serviceable gearbox within the next 1,000 flight hours.

All of the corrective actions specified above include rigging of the auto-throttle retarder control, and doing a functional test of the throttle system.

The service bulletin also recommends that, during the inspection, operators make sure that the bolt and the two screws on the throttle control rod are correctly torqued to 20–25 lbf-in (2.25–2.82 N m). If the torque is not correct, the service bulletin specifies tightening to the correct torque and sending a report of the wear value on the gearbox to Bombardier. Accomplishment of the actions specified in the Bombardier service bulletin is intended to adequately address the identified unsafe condition.

The Bombardier service bulletin references Trans Digm Inc., AeroControlex Group Service Bulletin 2100140–007–76–04, dated July 22, 2003, as an additional source of service information for accomplishment of the inspections and replacement.

TCCA classified the Bombardier service bulletin as mandatory and issued Canadian airworthiness directive CF–2004–01, dated January 21, 2004, to ensure the continued airworthiness of these airplanes in Canada.

### FAA's Conclusions

These airplane models are manufactured in Canada and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCCA has kept us informed of the situation described above. We have examined the findings of TCCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

### Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent failure of the engine throttle control gearboxes, which could result in an in-flight engine shutdown. This AD requires repetitive inspections of the left and right engine throttle control gearboxes for wear, and corrective action if necessary. This AD also includes a reporting requirement. The actions are required to be accomplished in accordance with the service bulletin described previously, except as discussed below.

This AD allows flight with wear on one engine throttle gearbox, provided that (1) the wear value meets the specifications in Part A, paragraph B.(7), of the Accomplishment Instructions of the Bombardier service bulletin, and (2) established inspection procedures detect wear values at intervals permitting replacement of the engine throttle control gearbox before the gearbox exceeds the acceptable wear value.

### Differences Among Canadian Airworthiness Directive, Bombardier Service Bulletin, and This AD

The Canadian airworthiness directive and the service bulletin specify the applicability as Model CL–600–2B19 airplanes with serial numbers 7003 through 7067 inclusive, and 7069 through 7999 inclusive. However, we have determined that all Model CL–600–2B19 may be subject to the identified unsafe condition; therefore, this AD is applicable to "All Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, certificated in any category."

Although the service bulletin recommends returning discrepant gearboxes to the parts manufacturer, this AD does not contain such a requirement.

The Canadian airworthiness directive and the service bulletin do not define the type of inspection for wear of the engine throttle control gearboxes. We have clarified the inspection requirement contained in the AD as a detailed inspection. A note has been added to the AD to define that inspection.

The Canadian airworthiness directive and the service bulletin recommend accomplishing the initial inspection of the engine throttle control gearboxes within 1,000 flight hours, but this AD requires accomplishment within 1,000 flight hours or 90 days, whichever is first. We find that a compliance time of 1,000 flight hours might not provide enough time to maintain an adequate level of safety for the affected fleet for those operators having airplanes with a

high number of flight hours every day. In developing an appropriate compliance time for this AD, we considered the degree of urgency associated with addressing the unsafe condition, and the maximum interval of time allowable for all affected airplanes to continue to operate without compromising safety. We find the specified compliance time to be appropriate for completing the initial inspection.

**Interim Action**

This AD is considered to be interim action. The reports that are required by this AD will enable the manufacturer to obtain better insight into the nature, cause, and extent of the wear of the engine throttle control gearbox, and eventually to develop final action to address the unsafe condition. Once final action has been identified, we may consider further rulemaking.

**Determination of Rule's Effective Date**

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

**Comments Invited**

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2004–NM–20–AD." The postcard will be date stamped and returned to the commenter.

**Regulatory Impact**

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

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

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

**2004–05–12 Bombardier, Inc. (Formerly Canadair):** Amendment 39–13507. Docket 2004–NM–20–AD.

*Applicability:* All Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, certificated in any category.

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

To prevent excessive wear of the gearboxes and subsequent movement or jamming of the engine throttle; movement of the throttle towards the idle position brings it close to the fuel shut-off switch, which could result in an in-flight engine shutdown, accomplish the following:

**Repetitive Inspections**

(a) Within 1,000 flight hours or 90 days after the effective date of this AD, whichever is first: Do a detailed inspection of the left and right engine throttle control gearboxes for wear by doing all the actions per Part A, paragraphs A., B., and C.(1) through C.(4), of the Accomplishment Instructions of Bombardier Service Bulletin 601R–76–019, dated August 21, 2003. If the wear value is the same as that specified in Part A, paragraph B.(8), of the Accomplishment Instructions of the service bulletin, repeat the inspection thereafter at intervals not to exceed 1,000 flight hours.

**Note 1:** For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

**Corrective Action**

(b) If the wear value found during any inspection required by paragraph (a) of this AD is not the same as that specified Part A, paragraph B.(8), of the Accomplishment Instructions of Bombardier Service Bulletin 601R–76–019, dated August 21, 2003: Do the applicable actions required by paragraph (b)(1), (b)(2), or (b)(3) of this AD, at the time specified, per the Accomplishment Instructions of the service bulletin. Repeat the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 1,000 flight hours.

(1) If the wear value on one or both of the gearboxes is the same as that specified in Part A, paragraph B.(5), of the Accomplishment Instructions of the service bulletin: Before further flight, replace the affected gearbox

with a new or serviceable gearbox, by doing all the actions per Part B, paragraphs D. through F.(7), of the Accomplishment Instructions of the service bulletin.

(2) If the wear value on both the left and right gearboxes is the same as that specified in Part A, paragraph B.(6), of the Accomplishment Instructions of the service bulletin: Before further flight, replace the gearbox having the higher wear value with a new or serviceable gearbox, by doing all the actions per Part B, paragraphs D. through F.(7), of the Accomplishment Instructions of the service bulletin. Within 1,000 flight hours after doing the replacement, replace the other gearbox.

(3) If the wear value on only one gearbox is the same as that specified in Part A, paragraph B.(7), and the wear value on the other gearbox is the same as that specified in Part A, paragraph B.(8), of the Accomplishment Instructions of the service bulletin: Within 1,000 flight hours after the inspection, replace the gearbox with the wear value that is the same as that specified in Part A, paragraph B.(7), with a new or serviceable gearbox. Do the replacement by doing all the actions per Part B, paragraphs D. through F.(7), of the Accomplishment Instructions of the service bulletin.

**Additional Service Information**

**Note 2:** Bombardier Service Bulletin 601R–76–019, dated August 21, 2003, references Trans Digm Inc., AeroControlex Group Service Bulletin 2100140–007–76–04, dated July 22, 2003, as an additional source of service information for accomplishment of the inspections and replacement.

**Reporting Requirement**

(c) Within 10 days after accomplishment of the inspection required by paragraph (a) of this AD, or within 10 days after the effective date of this AD, whichever is later: Submit a report of gearbox wear to Bombardier Aerospace, as specified in Part A, paragraph B.(1), and Part B, paragraph E.(1) of the Accomplishment Instructions of Bombardier Service Bulletin 601R–76–019, dated August 21, 2003.

**Alternative Methods of Compliance**

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

**Incorporation by Reference**

(e) The actions shall be done in accordance with Bombardier Service Bulletin 601R–76–019, dated August 21, 2003. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centreville, Montreal, Quebec H3C 3G9, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Westbury, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Note 3:** The subject of this AD is addressed in Canadian airworthiness directive CF–2004–01, dated January 21, 2004.

**Effective Date**

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

Issued in Renton, Washington, on February 25, 2004.

**Kalene C. Yanamura,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 04–4683 Filed 3–9–04; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2002–NM–334–AD; Amendment 39–13509; AD 2004–05–14]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 707 and 720 Series Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to all Boeing Model 707 and 720 series airplanes, that requires inspection of the bolt forward of the wing front spar upper chord on the overwing support fittings of the inboard and outboard nacelle struts to verify that BACB30US type bolts are installed. If any other type of bolt is found, this amendment requires replacement with a new BACB30US type bolt. This action is necessary to prevent separation of the engine from the airplane due to stress corrosion cracking and consequent fracturing of the bolts. This action is intended to address the identified unsafe condition.

**DATES:** Effective April 14, 2004.

The incorporation by reference of a certain publication listed in the regulations is approved by the Director of the Federal Register as of April 14, 2004.

**ADDRESSES:** The service information referenced in this AD may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Candice Gerretsen, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6428; fax (425) 917–6590.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Boeing Model 707 and 720 series airplanes was published in the **Federal Register** on November 25, 2003 (68 FR 66028). That action proposed to require inspection of the bolt forward of the wing front spar upper chord on the overwing support fittings of the inboard and outboard nacelle struts to verify that BACB30US type bolts are installed. If any other type of bolt is found, that action proposed to require replacement with a new BACB30US type bolt.

**Comments**

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

**Conclusion**

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

**Cost Impact**

There are approximately 230 airplanes of the affected design in the worldwide fleet. The FAA estimates that 42 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required inspection, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $2,730, or $65 per airplane.

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

**Regulatory Impact**

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

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

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

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

**2004–05–14 Boeing:** Amendment 39–13509. Docket 2002–NM–334–AD.

*Applicability:* All Model 707 and 720 series airplanes, as listed in Boeing 707/720 Alert Service Bulletin A3502, dated February 21, 2002; certificated in any category.

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

To prevent separation of the engine from the airplane due to stress corrosion cracking and consequent fracturing of the bolts, accomplish the following:

**Service Bulletin References**

(a) The term "service bulletin," as used in this AD, means the Accomplishment Instructions of Boeing 707/720 Alert Service Bulletin A3502, dated February 21, 2002.

**Inspection and Corrective Action**

(b) Except as provided by paragraph (c) of this AD, within 12 months from the effective date of this AD, perform a general visual inspection of the bolts forward of the wing front spar upper chord on the overwing support fittings of the inboard and outboard nacelle struts to verify that BACB30US type bolts are installed, per Figure 1 of the service bulletin.

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

(c) The service bulletin specifies that reviewing records is another way to verify if a BACB30US type bolt is installed. However, this AD does not allow that alternative. The general visual inspection required by paragraph (b) of this AD must be accomplished to verify if BACB30US type bolts are installed.

(d) If any bolt other than the BACB30US type bolts specified in Figure 1 of the service bulletin is found during the inspection required by paragraph (b) of this AD or if any bolt cannot be identified: Prior to further flight, do the actions specified in paragraphs (d)(1) and (d)(2) of this AD, per Figure 2 of the service bulletin.

(1) Perform a high frequency eddy current (HFEC) inspection of the hole bore for cracks and corrosion and measure the hole to verify the diameter is within the specified dimensions. If any corrosion or cracking is found or if the measured hole diameter is not within the specified dimensions, and the service bulletin specifies to contact Boeing for appropriate action: Prior to further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, the approval must specifically reference this AD.

(2) Replace the bolt with a new BACB30US type bolt per Figure 2 of the service bulletin.

**Parts Installation**

(e) As of the effective date of this AD, no person shall install any bolt other than a BACB30US type bolt in the locations specified in this AD, on any airplane.

**Alternative Methods of Compliance**

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

**Incorporation by Reference**

(g) Unless otherwise specified in this AD, the actions shall be done in accordance with Boeing 707/720 Alert Service Bulletin A3502, dated February 21, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Effective Date**

(h) This amendment becomes effective on April 14, 2004.

Issued in Renton, Washington, on February 24, 2004.

**Kalene C. Yanamura,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 04–4684 Filed 3–9–04; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2001–NM–148–AD; Amendment 39–13506; AD 2004–05–11]**

**RIN 2120–AA64**

## Airworthiness Directives; BAE Systems (Operations) Limited Model BAe 146 Series Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to all BAE Systems (Operations) Limited Model BAe 146 series airplanes, that requires repetitive general visual inspections of the inside of the condenser regenerative air ducts, air cycle machine turbine outlet, and the jet pump ducts on each air conditioning pack to detect oil and/or oil breakdown products leaking from the engine(s) or auxiliary power unit (APU). This AD also requires further inspections and replacement of any affected engine, APU, or component with a serviceable part, if necessary. This action is necessary to prevent impairment of the operational skills and abilities of the flightcrew caused by oil or oil breakdown products in the cabin air, which could result in reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

**DATES:** Effective April 14, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 14, 2004.

**ADDRESSES:** The service information referenced in this AD may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all BAE Systems (Operations) Limited Model BAe 146 series airplanes was published in the **Federal Register** on December 24, 2003 (68 FR 74532). That action proposed to require repetitive general visual inspections of the inside of the condenser regenerative air ducts, air cycle machine turbine outlet, and the jet pump ducts on each air conditioning pack to detect oil and/or oil breakdown products leaking from the engine(s) or auxiliary power unit (APU). That action also proposed to require further inspections and replacement of any affected engine, APU, or component with a serviceable part, if necessary.

### Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments have been submitted on the proposed AD or on the determination of the cost to the public.

### Conclusion

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

### Interim Action

We consider this AD to be interim action. If final action is later identified, we may consider further rulemaking then.

### Cost Impact

The FAA estimates that 20 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $2,600, or $130 per airplane, per inspection cycle.

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

### Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

### List of Subjects in 14 CFR Part 39

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

### Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

**2004–05–11 BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft):** Amendment 39–13506. Docket 2001–NM–148–AD.

*Applicability:* All Model BAe 146 series airplanes, certificated in any category.

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

To prevent impairment of the operational skills and abilities of the flightcrew caused by oil or oil breakdown products in the cabin air, which could result in reduced controllability of the airplane, accomplish the following:

#### Service Bulletin Reference

(a) The following information pertains to the service bulletin referenced in this AD:

(1) The term "service bulletin," as used in this AD, means the Accomplishment Instructions of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.21–150, Revision 2, dated October 24, 2002.

(2) Inspections and corrective actions accomplished before the effective date of this AD per BAE Systems (Operations) Limited Inspection Service Bulletin ISB.21–150, dated March 20, 2001; or BAE Systems (Operations) Limited Inspection Service Bulletin ISB.21–150, Revision 1, dated January 29, 2002; are acceptable for compliance with the corresponding actions required by this AD.

#### Initial Inspection

(b) Within 500 flight cycles after the effective date of this AD: Perform a general visual inspection of the inside of both the condenser regenerative air ducts, air cycle machine turbine outlet, and the jet pump ducts on each air conditioning pack for the presence of oil contamination, per the service bulletin.

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

#### Repetitive Inspections

(c) If no oil contamination is found during the inspection required by paragraph (b) of

this AD: Repeat the inspection at intervals not to exceed 500 flight cycles in accordance with the service bulletin.

**Detailed Inspection and Replacement**

(d) If any oil contamination is found during the inspection required by paragraph (b) of this AD: Before further flight, perform a detailed inspection of any affected engine, APU, or component of the engine(s) or APU to determine the cause of the oil contamination per the service bulletin.

(1) If the cause of the oil contamination is found: Except as provided by paragraph (f) of this AD, before further flight, remove any affected engine, APU, or component and replace it with a serviceable part in accordance the service bulletin. Repeat the general visual inspection required by paragraph (b) of this AD at intervals not to exceed 500 flight cycles in accordance with the service bulletin.

(2) If the cause of the oil contamination is not found, repeat the inspection required by paragraph (b) of this AD at intervals not to exceed 50 flight cycles in accordance with the service bulletin.

**Note 2:** For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

**Inspection and Repair Following Air Quality Problems**

(e) If any cabin air quality problem, whether intermittent or persistent, is reported that is suspected of being associated with oil contamination of the air supply from the environmental control system packs: Before further flight, perform the detailed inspection and any necessary corrective action required by paragraph (d) of this AD in accordance with the service bulletin.

**Continued Operation Without Replacement**

(f) Airplanes may be operated without accomplishing the replacement(s) required by paragraph (d)(1) of this AD under the conditions described in paragraphs 2.E.(1), 2.E.(2), and 2.E.(3) of the service bulletin, and in accordance with the provisions and limitations specified in the operator's Master Minimum Equipment List. Repeat the inspection required by paragraph (b) of this AD at intervals not to exceed 500 flight cycles in accordance with the service bulletin.

**Parts Installation**

(g) As of the effective date of this AD, no person may install on any airplane an engine, APU, or component that has been removed per paragraph (d)(1) of this AD, unless it has been cleaned in accordance with paragraph 2.H. of the service bulletin.

**No Reporting Requirements**

(h) Although the service bulletin referenced in this AD specifies to submit certain information to the manufacturer, this AD does not include such a requirement.

**Alternative Methods of Compliance**

(i) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, is authorized to approve alternative methods of compliance for this AD.

**Incorporation by Reference**

(j) The actions shall be done in accordance with BAE Systems (Operations) Limited Inspection Service Bulletin ISB.21–150, Revision 2, dated October 24, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Note 3:** The subject of this AD is addressed in British airworthiness directive 002–03–2001, dated March 21, 2001.

**Effective Date**

(k) This amendment becomes effective on April 14, 2004.

Issued in Renton, Washington, on February 20, 2004.

**Kalene C. Yanamura,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 04–4685 Filed 3–9–04; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2003–NM–258–AD; Amendment 39–13516; AD 2004–05–21]**

**RIN 2120–AA64**

## Airworthiness Directives; Bombardier Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 Airplanes

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

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that is applicable to certain Bombardier airplanes as listed above. This action requires lubrication of the flap actuators, repetitive measurements ("checks") of the backlash of the flap actuators, determination of the next backlash measurement interval, and replacement of discrepant actuators with new or overhauled actuators if necessary. This action is necessary to prevent the mechanical disconnection of a flap actuator, which, if followed by failure of the flap panel's second actuator due to increased loading, could result in flap asymmetry and consequent loss of controllability of the airplane. This action is intended to address the identified unsafe condition.

**DATES:** Effective March 25, 2004.

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

Comments for inclusion in the Rules Docket must be received on or before April 9, 2004.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–258–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov*. Comments sent via the Internet must contain "Docket No. 2003–NM–258–AD" in the subject line and need not be submitted in triplicate. Comments sent via fax or the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in this AD may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, FAA, 1600 Stewart Avenue, suite 410, Westbury, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Ezra Sasson, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, New York Aircraft Certification Office, FAA, 1600 Stewart Avenue, suite 410, Westbury, New York 11590; telephone (516) 228–7320; fax (516) 794–5531.

**SUPPLEMENTARY INFORMATION:** Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on certain Bombardier Model DHC–8–102, –103,

–106, –201, –202, –301, –311, and –315 airplanes. TCCA advises that field reports indicate that the ballscrew and nut assembly of the flap drive actuators may wear to the extent that the ballscrew mechanically disconnects from the ballnut. There have been four known incidents that involved actuator disconnect. The mechanical disconnection of the ballscrew from the ballnut can lead to binding of the flap system. If both actuators of an extended flap panel disconnect, the affected panel may be aerodynamically backdriven, resulting in asymmetric flaps. This condition, if not corrected, could result in loss of controllability of the airplane.

**Maintenance Schedule**

Analysis of new data indicates the need to reduce the current interval specified in the Bombardier Model DHC–8 maintenance program for measuring the backlash of the flap ballscrew actuators. Based on the new data, the FAA and TCCA have determined that this interval must be reduced from a "2C" check (currently a maximum of 10,000 flight hours) to a variable interval (a maximum of 3,000 flight cycles) that is based on each previous backlash measurement and actuator wear rate.

**Explanation of Relevant Service Information**

Bombardier has issued Alert Service Bulletin A8–27–98, dated February 20, 2003, which describes procedures for measuring the backlash of the flap actuators. The service bulletin also provides the means to calculate each subsequent interval for repeating the backlash measurement, based on the wear rate and previous backlash measurement. If a certain backlash length is exceeded, the service bulletin recommends replacing the actuator with a serviceable actuator before further flight.

Bombardier has revised certain procedures for lubricating the flap actuators, which are described in the temporary revisions (TRs) to the de Havilland Dash-8 Maintenance Program Manual listed in the following table:

DE HAVILLAND MAINTENANCE PROGRAM MANUAL TRS

| Model | PSM No. | de Havilland TR No. | Task No. |
|---|---|---|---|
| DHC–8–102, –103, and –106 airplanes | 1–8–7 | MRB–143 | 2750/04 |
| DHC–8–201 and –202 airplanes | 1–82–7 | MRB 2–21 | 2750/04 |
| DHC–8–301, –311, and –315 airplanes | 1–83–7 | MRB 3–152 | 2750/04 |

These TRs introduce procedures that incorporate use of new lubrication tools and a particular grease that will improve lubrication of the flap actuators and consequently reduce component wear.

Accomplishment of the actions specified in the service information is intended to adequately address the identified unsafe condition. TCCA mandated accomplishment of this service information and issued Canadian airworthiness directive CF–2002–26R1, dated October 6, 2003, to ensure the continued airworthiness of these airplanes in Canada.

**FAA's Conclusions**

These airplane models are manufactured in Canada and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCCA has kept the FAA informed of the situation described above. The FAA has examined the findings of TCCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

**Explanation of Requirements of Rule**

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent the mechanical disconnection of a flap actuator, which, if followed by failure of the panel's second actuator due to increased loading, could result in flap asymmetry and consequent loss of controllability of the airplane. This AD requires a one-time actuator lubrication, repetitive measurements ("checks") of the backlash of the flap actuators, determination of each subsequent backlash check interval, and replacement of discrepant actuators with new or overhauled actuators if necessary. The actions are required to be accomplished in accordance with the service information described previously. The compliance times for the initial measurement range from 30 days to 3,000 total accumulated flight cycles on the actuator, with each subsequent interval ranging from 45 to 3,000 flight cycles, depending on each previous measurement and the wear rate. The FAA and TCCA agree on the following minor variations between the airworthiness directives:

1. Part A., paragraph 1., of the TCCA airworthiness directive mandates revising the TCCA-approved maintenance schedule by incorporating the applicable flap actuator lubrication task specified in the maintenance program manual TRs described previously. This (FAA) AD requires a one-time lubrication, but the lubrication maintenance schedule is not expressly required by this AD, because the lubrication schedule itself does not address the unsafe condition identified in this (FAA) AD. Rather, the lubrication schedule was established to reduce wear and tear on the flap actuators (thereby extending actuator life and decreasing costs).

2. Part A., paragraph 3., of the TCCA airworthiness directive mandates a specific compliance time, task card, and lubrication tools and grease for the lubrication. This (FAA) AD does not include these requirements, which are specified in the task card as part of the maintenance manual TRs (and specified in part A., paragraph 2., of the TCCA airworthiness directive); operators are expected to comply with the current, MRB-required task card. If an operator cannot comply with this AD because the specific grease or tools are unavailable within the required compliance time, the FAA may consider requests to extend the compliance time, as provided by paragraph (f) of this AD, if data are presented to justify such an extension.

3. The TCCA airworthiness directive mandates sending an inspection report to Bombardier or the actuator manufacturer (Hamilton Sundstrand). This (FAA) AD does not require such a report.

4. The TCAA airworthiness directive requires that certain actions be done "not later than during the next A-check." Paragraph (a)(2) of this (FAA) AD identifies that interval as 500 flight

hours, which for all affected operators is the same as the A-check.

5. In this (FAA) AD, Notes 1 through 12 of the TCCA airworthiness directive have been either excluded as redundant or incorporated as guidance into the requirements.

**Determination of Rule's Effective Date**

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

**Comments Invited**

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2003–NM–258–AD." The postcard will be date stamped and returned to the commenter.

**Regulatory Impact**

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

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

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

**2004–05–21 Bombardier, Inc. (Formerly de Havilland, Inc.):** Amendment 39–13516. Docket 2003–NM–258–AD.

*Applicability:* Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 airplanes; certificated in any category; serial numbers 003 and subsequent; equipped with any flap actuator having part number 734181, 734374, or 755216.

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

To prevent the mechanical disconnection of a flap actuator, which, if followed by failure of the flap panel's second actuator due to increased loading, could result in flap asymmetry and consequent loss of controllability of the airplane, accomplish the following:

**Actuator Lubrication**

(a) Lubricate the flap actuators at the later of the times specified in paragraphs (a)(1) and (a)(2) of this AD, in accordance with the product support manuals (PSMs) and temporary revisions (TRs) to the maintenance program manual listed in Table 1 of this AD.

(1) Within 2,500 flight hours or 18 months after the most recent flap actuator lubrication, whichever occurs first.

(2) Within 500 flight hours after the effective date of this AD.

TABLE 1.—DE HAVILLAND MAINTENANCE PROGRAM MANUAL TRS

| TR | PSM | Task No. |
|---|---|---|
| MRB–143 | 1–8–7 | 2750/04 |
| MRB 2–21 | 1–82–7 | 2750/04 |
| MRB 3–152 | 1–83–7 | 2750/04 |

**Initial Backlash Measurement**

(b) Table 2 of this AD identifies service information references for the backlash measurement. Operators may have previously used one of these references to measure the actuator backlash.

TABLE 2.—BACKLASH MEASUREMENT REFERENCES

| Reference | Date |
|---|---|
| Bombardier Alert Service Bulletin A8–27–95 | October 31, 2001. |
| Bombardier Alert Service Bulletin A8–27–95, Revision A | April 17, 2002. |
| Bombardier Alert Service Bulletin A8–27–98 | February 20, 2003. |
| DHC–8 Maintenance Task Card Manual, Task No. 2750/18 | November 23, 2001, or later revisions issued before the effective date of this AD. |
| Transport Canada Airworthiness Directive CF–2002–26 | May 2, 2002. |

Measure the backlash of each actuator at the applicable time specified in paragraph (b)(1) or (b)(2) of this AD, in accordance with the Accomplishment Instructions of the applicable Hamilton Sundstrand Service Bulletin 734181–27–A5 or 734374–27–A5, both of which form part of Bombardier Alert Service Bulletin A8–27–98, dated February 20, 2003.

(1) If the most recent backlash measurement has been done before the effective date of this AD in accordance with a reference listed in Table 2 of this AD: Do the applicable action specified in Table 3 of this AD.

TABLE 3.—INTERVALS: BACKLASH MEASUREMENT DONE PREVIOUSLY

| If the measurement was— | Then— |
|---|---|
| (i) ≤ 0.027 inch | Do the initial measurement within the later of: 3,000 flight cycles since the most recent measurement, or 90 days after the effective date of this AD. |
| (ii) > 0.027 inch and < 0.060 inch, and the wear rate is recorded or can be calculated. | The applicable interval specified in Service Bulletin A8–27–98, or 90 days after the effective date of this AD. |
| (iii) > 0.027 inch and < 0.060 inch, but the wear rate is unknown or cannot be calculated due to lack of data. | The applicable interval, based on a wear rate of 0.010 inch per 1,000 flight cycles, as specified in Service Bulletin A8–27–98, or 90 days after the effective date of this AD. |
| (iv) ≥ 0.060 inch and < 0.070 inch, and the wear rate is recorded or can be calculated. | The applicable interval specified in Service Bulletin A8–27–98, or 30 days after the effective date of this AD. |
| (v) ≥ 0.060 inch and < 0.070 inch, but the wear rate is unknown or cannot be calculated due to lack of data. | The applicable interval, based on a wear rate of 0.010 inch per 1,000 flight cycles, as specified in Service Bulletin A8–27–98, or 30 days after the effective date of this AD. |
| (vi) < 0.050 inch, but not recorded | 1,000 flight cycles since the most recent measurement, or 90 days after the effective date of this AD. |
| (vii) ≥ 0.070 inch | Replace the flap actuator with a new or overhauled part: Before further flight. |

(2) If no backlash measurement has been done as of the effective date of this AD in accordance with a reference listed in Table 2 of this AD: Do the next measurement at the applicable time specified in Table 4 of this AD.

TABLE 4.—INTERVALS: NO PRIOR BACKLASH MEASUREMENT

| If the actuator, since new or overhauled, has accumulated— | Then do the initial measurement within— |
|---|---|
| (i) ≤ 3,000 total flight cycles | 3,000 total flight cycles since new or overhauled, or within 180 days after the effective date of this AD, whichever occurs later. |
| (ii) > 3,000 total flight cycles | 60 days after the effective date of this AD. |

**Determination of Subsequent Intervals**

(c) After each actuator backlash measurement required by this AD, determine (calculate) the next measurement interval by the applicable time specified in Table 5 of this AD. To determine each interval, use paragraph 2.A.(4)(b) and Figure 4 of the applicable Hamilton Sundstrand Service Bulletin 734181–27–A5 or 734374–27–A5, both of which form part of Bombardier Alert Service Bulletin A8–27–98, dated February 20, 2003. Alternatively, the Bombardier spreadsheet "Dash 8 Q100/200/300 Flap Ballscrew Backlash Data, Data Recording and Charting Utility," document number BM_DHI_RM_APP01, may be used.

TABLE 5.—TIMEFRAME TO DETERMINE SUBSEQUENT INTERVALS

| For any recorded backlash that was— | Determine (calculate) the next interval— |
|---|---|
| (1) ≥ 0.060 inch and < 0.070 inch | Within 45 flight cycles after the recorded completion of backlash measurement. |
| (2) > 0.027 inch and < 0.060 inch | Within 30 days after the recorded completion of backlash measurement. |
| (3) ≤ 0.027 inch | Within 3,000 flight cycles after the recorded completion of backlash measurement. |
| (4) Not done because the actuator was new or newly overhauled | Before the accumulation of 3,000 total flight cycles on the actuator. |

**Subsequent Repetitive Measurements**

(d) After the initial backlash measurement required by paragraph (b) of this AD, repeat each subsequent measurement within the applicable interval specified in paragraph (c) of this AD, in accordance with paragraph 2.A.(1) of the applicable Hamilton Sundstrand Service Bulletin 734181–27–A5 or 734374–27–A5, both of which form part of Bombardier Alert Service Bulletin A8–27–98, dated February 20, 2003.

**Follow-on and Corrective Actions**

(e) After each backlash measurement required by paragraph (b) or (d) of this AD, do the actions required by paragraph (e)(1) or (e)(2), as applicable, of this AD. Do the actions in accordance with the Accomplishment Instructions of Bombardier Alert Service Bulletin A8–27–98, dated February 20, 2003.

(1) For any measured backlash of less than 0.070 inch: Repeat the measurement within the interval specified in paragraph (c) of this AD.

(2) For any measured backlash of 0.070 inch or more: Replace the actuator with a new or overhauled actuator before further flight.

**Alternative Methods of Compliance**

(f) In accordance with 14 CFR 39.19, the Manager, New York Aircraft Certification Office (ACO), FAA, is authorized to approve alternative methods of compliance for this AD.

**Incorporation by Reference**

(g) Unless otherwise specified in this AD, the actions must be done in accordance with Bombardier Alert Service Bulletin A8–27–98, dated February 20, 2003; and the de Havilland temporary revisions to the applicable de Havilland Dash-8 Program Support Manuals listed in Table 6 of this AD:

TABLE 6.—DE HAVILLAND TEMPORARY REVISIONS

| Service information | PSM | Task No. | Date |
|---|---|---|---|
| Temporary Revision MRB–143 | 1–8–7 | 2750/04 | May 18, 2001. |
| Temporary Revision MRB 2–21 | 1–82–7 | 2750/04 | May 18, 2001. |
| Temporary Revision MRB 3–152 | 1–83–7 | 2750/04 | May 18, 2001. |

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, FAA, 1600 Stewart Avenue, suite 410, Westbury, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Note 1:** The subject of this AD is addressed in Canadian airworthiness directive CF–2002–26R1, dated October 6, 2003.

**Effective Date**

(h) This amendment becomes effective on March 25, 2004.

Issued in Renton, Washington, on March 1, 2004.

**Ali Bahrami,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 04–5069 Filed 3–9–04; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2002–NM–178–AD; Amendment 39–13512; AD 2004–05–17]**

**RIN 2120–AA64**

## Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 and –145 Series Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD), applicable to all Model EMB–135 and –145 series airplanes, that currently requires repetitive inspections to detect discrepancies of both vertical-to-horizontal stabilizer bonding jumpers and the connecting support structure, and corrective action if necessary. This amendment requires modification of the bonding jumpers, including the installation of a protective cover to the elevator control cables, which terminates the requirements of the existing AD. The actions specified by this AD are intended to prevent damaged or severed bonding jumpers, which, in the event of a lightning strike, could result in severed elevator control cables and consequent reduced elevator control capability and reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

**DATES:** Effective April 14, 2004.

The incorporation by reference of EMBRAER Service Bulletin 145–55–0028, Revision 02, dated February 27, 2003, as listed in the regulations, is approved by the Director of the Federal Register as of April 14, 2004.

The incorporation by reference of EMBRAER Alert Service Bulletin 145–55–A028, dated April 10, 2002, as listed in the regulations, was approved previously by the Director of the Federal Register as of May 16, 2002 (67 FR 21572, May 1, 2002).

The incorporation by reference of EMBRAER Alert Service Bulletin 145–55–A025, dated June 5, 2001, as listed in the regulations, was approved previously by the Director of the Federal Register as of September 5, 2001 (66 FR 43768, August 21, 2001).

**ADDRESSES:** The service information referenced in this AD may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2002–08–21, amendment 39–12733 (67 FR 21572, May 1, 2002), which is applicable to all EMBRAER Model EMB–135 and –145 series airplanes, was published in the **Federal Register** on December 3, 2003 (68 FR 67613). The action proposed to require repetitive inspections to detect discrepancies of both vertical-to-horizontal stabilizer bonding jumpers and the connecting support structure, corrective action if necessary, and modification of the bonding jumpers, including the installation of a protective cover to the elevator control cables, which would terminate the repetitive inspections.

**Comments**

We provided the public the opportunity to participate in the development of this AD. No comments have been submitted on the proposed AD or on the determination of the cost to the public.

**Conclusion**

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

**Cost Impact**

This AD affects about 360 airplanes of U.S. registry.

The actions that are currently required by AD 2002–08–21 take about 2 work hours per airplane, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $46,800, or $130 per airplane, per inspection cycle.

The terminating action required by this AD will take about 6 work hours per airplane, at an average labor rate of $65 per work hour. Required parts will cost about $206 per airplane. Based on these figures, the cost impact of the requirements of this AD on U.S. operators is estimated to be $214,560, or $596 per airplane.

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

**Regulatory Impact**

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

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

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

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

■ 2. Section 39.13 is amended by removing amendment 39–12733 (67 FR 21572, May 1, 2002), and by adding a new airworthiness directive (AD), amendment 39–13512, to read as follows:

**2004–05–17 Empresa Brasileira de Aeronautica S.A. (EMBRAER):** Amendment 39–13512. Docket 2002–NM–178–AD. Supersedes AD 2002–08–21, Amendment 39–12733.

*Applicability:* All Model EMB–135 and –145 series airplanes; certificated in any category.

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

To prevent damaged or severed bonding jumpers, which, in the event of a lightning strike, could result in severed elevator control cables and consequent reduced elevator control capability and reduced controllability of the airplane, accomplish the following:

**Restatement of Requirements of AD 2002–08–21**

*Inspection of the Bonding Jumpers*

(a) For airplanes subject to the requirements of AD 2001–17–04, amendment 39–12395 (which was superseded by AD 2002–08–21, amendment 12733): Except as provided by paragraph (f) of this AD, within the next 100 flight hours after September 5, 2001 (the effective date of AD 2001–17–04), perform a detailed inspection to determine if the two bonding jumpers that connect the horizontal to the vertical stabilizers are properly installed, per EMBRAER Alert Service Bulletin 145–55–A025, dated June 5, 2001.

**Note 1:** For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

*Follow-on Action*

(b) For airplanes subject to the requirements of paragraph (a) of this AD: If both bonding jumpers are installed properly, before further flight, determine if the jumpers are mechanically tensioned to a slack distance of 5 millimeters (mm) or less between the reference line and the jumper as specified in View E of EMBRAER Alert Service Bulletin 145–55–A025, dated June 5, 2001.

(1) If any slack distance is 5 mm or less, before further flight, replace the bonding jumper with a new jumper having part number (P/N) LN926416X165, per the alert service bulletin.

(2) If any slack distance is 6 mm or more, at the time specified in paragraph (d) of this AD, accomplish those actions specified in paragraph (d) of this AD.

*Corrective Actions*

(c) For airplanes subject to the requirements of paragraph (a) of this AD: If either bonding jumper is not installed properly (*e.g.*, misaligned, signs of previous elongation, or damage), before further flight, replace the bonding jumper with a new jumper having P/N LN926416X165, per EMBRAER Alert Service Bulletin 145–55–A025, dated June 5, 2001.

*Inspection of the Connecting Supports*

(d) For airplanes subject to the requirements of AD 2001–17–04: Within the next 100 flight hours after September 5, 2001, perform a detailed inspection to determine if the supports that connect the bonding jumpers to the horizontal stabilizers are deformed, cracked, or ruptured; per EMBRAER Alert Service Bulletin 145–55–A025, dated June 5, 2001.

(1) If no deformation is detected, no further action is required by this paragraph.

(2) If any connecting support having deformation of 30 degrees or less has any sign of a painting discrepancy, before further flight, repaint the support per the alert service bulletin. The support must remain in the position it was found, as specified in the alert service bulletin.

(3) If any connecting support is deformed above 30 degrees or any signs of cracking or ruptures are detected, before further flight, replace the connecting support with a new support per the alert service bulletin.

(e) For airplanes subject to the requirements of AD 2001–17–04: If the inspection required by paragraph (f) of this AD is performed before the inspections specified in paragraphs (a) and (d) of this AD, it is not necessary to perform the inspections specified in paragraphs (a) and (d) of this AD.

*Repetitive Inspections*

(f) For all airplanes: Except as required by paragraphs (h) and (i) of this AD, within 100 flight hours after May 16, 2002 (the effective date of AD 2002–08–21), perform a detailed inspection as specified in paragraphs (f)(1) and (f)(2) of this AD, per EMBRAER Alert Service Bulletin 145–55–A028, dated April 10, 2002; or Service Bulletin 145–55–0028, Revision 02, dated February 27, 2003. If any discrepancy is found during any inspection required by this paragraph: Before further flight, perform applicable corrective actions (including replacing any discrepant part with a new part and restoring the support painting) per the alert service bulletin. Repeat the inspection at intervals not to exceed 800 flight hours, except as provided by paragraphs (h) and (i) of this AD.

(1) Inspect both bonding jumpers of the vertical-to-horizontal stabilizer to detect discrepancies (including overstretching, fraying, or other damage; and misaligned or otherwise incorrectly installed bonding jumper terminals).

(2) Inspect the connecting support structure to detect deformation or signs of cracks or ruptures, and, before further flight, inspect the general conditions of the paint of any discrepant support.

(g) Inspections done before the effective date of this AD per EMBRAER Alert Service Bulletin 145–55–A028, Change 01, dated June 7, 2002, are acceptable for compliance with the requirements of paragraph (f) of this AD.

*Conditional Requirements for Immediate Inspection*

(h) Notwithstanding the requirements of paragraph (f) of this AD: Before further flight following removal of any parts identified in paragraphs (h)(1), (h)(2), and (h)(3) of this AD, perform the inspection specified in paragraph (f) of this AD. The task numbers below are identified in EMBRAER Airplane Maintenance Manuals AMM–145/1124 and AMM–145/1230.

(1) The horizontal stabilizer (as specified in EMBRAER Airplane Maintenance Manual (AMM) task number 55–10–00–000–801–A).

(2) The horizontal stabilizer actuator (as specified in AMM task number 27–40–02–000–801–A).

(3) The left-hand or right-hand seal fairings (as specified in AMM task number 55–36–00–020–002–A00).

(i) Before further flight following a lightning strike, perform a "Lightning Strike—Inspection Check" and applicable corrective actions, per AMM task number 05–50–01–06.

**Note 2:** Following accomplishment of an inspection per paragraph (h) or (i) of this AD, the repetitive interval of the next inspection may be extended to 800 flight hours after accomplishment of the inspection required by paragraph (h) or (i) of this AD, as applicable.

**New Requirements of This AD**

*Terminating Action*

(j) Within 800 flight hours after the effective date of this AD, modify the bonding jumpers, including installing a protective cover for the elevator control cables, in accordance with Part II of the Accomplishment Instructions of EMBRAER Service Bulletin 145–55–0028, Revision 02, dated February 27, 2003. Accomplishment of this modification terminates the requirements of this AD.

(k) A modification done before the effective date of this AD per EMBRAER Service Bulletin 145–55–0028, Change 01, dated June 7, 2002, is acceptable for compliance with the requirements of paragraph (j) of this AD.

*Alternative Methods of Compliance*

(l) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, is authorized to approve alternative methods of compliance for this AD.

*Incorporation by Reference*

(m) Unless otherwise specified in this AD, the actions shall be done in accordance with EMBRAER Alert Service Bulletin 145–55–A025, dated June 5, 2001; EMBRAER Alert Service Bulletin 145–55–A028, dated April 10, 2002; and EMBRAER Service Bulletin 145–55–0028, Revision 02, dated February 27, 2003; as applicable. EMBRAER Service Bulletin 145–55–0028, Revision 02, contains the following effective pages:

| Page No. | Revision level shown on page | Date shown on page |
|---|---|---|
| 1, 2 | 02 | February 27, 2003. |
| 3–6, 19–22 | 01 | June 7, 2002. |
| 7–18, 23–31 | Original | May 20, 2002. |

(1) The incorporation by reference of EMBRAER Service Bulletin 145–55–0028, Revision 02, dated February 27, 2003, is approved by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of EMBRAER Alert Service Bulletin 145–55–A028, dated April 10, 2002, was approved previously by the Director of the Federal Register as of May 16, 2002 (67 FR 21572, May 1, 2002).

(3) The incorporation by reference of EMBRAER Alert Service Bulletin 145–55–A025, dated June 5, 2001, was approved previously by the Director of the Federal Register as of September 5, 2001 (66 FR 43768, August 21, 2001).

(4) Copies may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Note 3:** The subject of this AD is addressed in Brazilian airworthiness directive 2001–06–03R2, dated June 24, 2002.

*Effective Date*

(n) This amendment becomes effective on April 14, 2004.

Issued in Renton, Washington, on March 1, 2004.

**Ali Bahrami,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 04–5070 Filed 3–9–04; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2004–NE–11–AD; Amendment 39–13517; AD 2004–05–22]**

**RIN 2120–AA64**

## Airworthiness Directives; Rolls-Royce Deutschland (RRD) (Formerly Rolls-Royce, plc) TAY 611–8, TAY 620–15, TAY 650–15, and TAY 651–54 Series Turbofan Engines

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

**ACTION:** Final rule; request for comments.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for certain RRD TAY 611–8, TAY 620–15, TAY 650–15, and TAY 651–54 series turbofan engines with ice-impact panels installed in the low pressure (LP) compressor case. This AD requires

inspecting all ice-impact panels and fillers in the LP compressor case for certain conditions, and if necessary, replacing any ice-impact panels and fillers that have those conditions. This AD results from two reports of ice-impact panels that released during flight, one of which resulted in reduction of power in both engines. We are issuing this AD to prevent release of ice-impact panels due to improper bonding that can result in loss of thrust in both engines.

**DATES:** Effective March 25, 2004. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of March 25, 2004.

We must receive any comments on this AD by May 10, 2004.

**ADDRESSES:** Use one of the following addresses to submit comments on this AD:

- By mail: The Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2004–NE–11–AD, 12 New England Executive Park, Burlington, MA 01803–5299.
- By fax: (781) 238–7055.
- By e-mail: *9-ane-adcomment@faa.gov*

You can get the service information referenced in this AD from Rolls-Royce Deutschland Ltd & Co KG, Eschenweg 11, D–15827 Dahlewitz, Germany; telephone 49 (0) 33–7086–1768; fax 49 (0) 33–7086–3356.

You may examine the AD docket, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA. You may examine the service information, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Jason Yang, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7747; fax (781) 238–7199.

**SUPPLEMENTARY INFORMATION:** The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified the FAA that an unsafe condition may exist on certain RRD TAY 611–8, TAY 620–15, TAY 650–15, and TAY 651–54 series turbofan engines. The LBA advises that they received two reports of ice-impact panels that separated from LP compressor cases during icing conditions and caused significant reductions of thrust in the engines. In one case, on a Fokker F.28 Mk. 0070, the panels separated almost simultaneously in both TAY 620–15 turbofan engines and reduced the thrust of the engines to the point that the airplane made an emergency, off-airport landing. That landing resulted in damage to the airplane landing gear and bottom side of the airplane fuselage. In the other case, the panels released on a single TAY 620–15 turbofan engine installed on a Fokker F.28 Mk.0100 airplane. The original configuration of ice-impact panels used 36 small ice-impact panels. Rolls-Royce, plc Service Bulletin (SB) No. TAY–72–1326 introduced six large panels instead of the 36 small panels. Repair procedures TV5451R or HRS3491 allow replacing six adjacent small panels of the 36-panel configuration with a single large panel.

**Relevant Service Information**

We have reviewed and approved the technical contents of RRD SB No. TAY–72–1627, Revision 2, dated February 5, 2004; and RRD SB No. TAY–72–1631, dated February 6, 2004; that describe procedures for inspecting, and if necessary, replacing the ice-impact panels on the LP compressor case. The LBA classified these service bulletins as mandatory and issued AD D–2004–055R1, dated January 24, 2004; and AD D–2004–090, dated February 12, 2004; in order to ensure the airworthiness of these RRD engines in Germany.

**Differences Between This AD and the Service Information**

The RRD SBs specify calendar dates for the compliance times. We have included compliance times based on engine cycles with the calendar date as an end date. We used a risk analysis from RRD to determine the engine cycles for the compliance times.

**Bilateral Airworthiness Agreement**

This engine model is manufactured in Germany and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Under this bilateral airworthiness agreement, the LBA has kept us informed of the situation described above. We have examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

**FAA's Determination and Requirements of this AD**

The unsafe condition described previously is likely to exist or develop on other RRD TAY 611–8, TAY 620–15, TAY 650–15, and TAY 651–54 series turbofan engines of the same type design. We are issuing this AD to prevent release of ice-impact panels due to improper bonding that can result in loss of thrust in both engines. This AD requires inspecting, and if necessary replacing, ice-impact panels on the LP compressor cases. You must use the service information described previously to perform the actions required by this AD.

**FAA's Determination of the Effective Date**

Since an unsafe condition exists that occurs during icing conditions, and the compliance times for the actions equate to about two months after the effective date of this AD, we require the immediate adoption of this AD. We have found that notice and opportunity for public comment before issuing this AD are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

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

On July 10, 2002, we issued a new version of 14 CFR part 39 (67 FR 47998, July 22, 2002), which governs our AD system. This regulation now includes material that relates to special flight permits, alternative methods of compliance, and altered products. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

**Interim Action**

These actions are interim actions and we may take further rulemaking actions in the future.

**Comments Invited**

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES**. Include "AD Docket No. 2004–NE–11–AD" in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments

on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it. If a person contacts us verbally, and that contact relates to a substantive part of this AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the AD in light of those comments.

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications with you. You may get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov*.

**Examining the AD Docket**

You may examine the AD Docket (including any comments and service information), by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. *See* **ADDRESSES** for the location.

**Regulatory Findings**

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

For the reasons discussed above, I certify that the regulation:

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

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

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

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include "AD Docket No. 2004–NE–11–AD" in your request.

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

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

**200X–05–22 Rolls-Royce Deutschland Ltd & Co KG (RRD) (Formerly Rolls-Royce, plc):** Amendment 39–13517. Docket No. 2004–NE–11–AD.

**Effective Date**

(a) This airworthiness directive (AD) becomes effective March 25, 2004.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to RRD TAY 611–8, TAY 620–15, TAY 650–15, and TAY 651–54 series turbofan engines with ice-impact panels installed in the low pressure (LP) compressor case that conform to Rolls-Royce, plc (RR) Service Bulletin (SB) No. TAY–72–1326 or were repaired using repair procedures TV5415R or HRS3491. These engines are installed on, but not limited to, Fokker F.28 Mk.0070 and Mk.0100 series airplanes, Gulfstream Aerospace G–IV series airplanes, and Boeing Company 727–100 series airplanes modified in accordance with Supplemental Type Certificate (STC) SA8472SW (727–QF).

**Unsafe Condition**

(d) This AD results from two reports of ice-impact panels that released during flight, one of which resulted in reduction of power in both engines. We are issuing this AD to prevent release of ice-impact panels due to improper bonding that can result in loss of thrust in both engines.

**Compliance**

(e) You are responsible for having the actions required by this AD performed within the compliance times specified unless the actions have already been done.

**Inspecting the Ice-impact Panels for Movement and Moisture on the Panel and Damage to the Blue Filler on Airplanes That Have Two or Three Engines With the Affected Ice-impact Panels**

(f) For airplanes that have two TAY 620–15 or TAY 650–15 engines with ice-impact panels, and the ice-impact panels on any of those engines incorporate RR SB No. TAY–72–1326 or were repaired using repair procedures TV5415R or HRS3491, do the following.

(1) Within 500 cycles-in-service (CIS) after the effective date of this AD, but no later than August 15, 2004, inspect for the condition of the ice-impact panels and blue fillers on one or two engines so that no more than one engine with ice-impact panels and fillers that need to be inspected remains on the airplane. Use 3.B.(1) through 3.D.(2) of the Accomplishment Instructions of RRD SB No. TAY–72–1627, Revision 2, dated February 5, 2004.

(2) Within 1,500 CIS after the effective date of this AD, inspect for the condition of the ice-impact panels and blue fillers on the remaining engine. Use 3.B.(1) through 3.D.(2) of the Accomplishment Instructions of RRD SB No. TAY–72–1627, Revision 2, dated February 5, 2004.

(g) For airplanes that have two or three TAY 651–54 engines with ice-impact panels incorporated with RR SB No. TAY–72–1326 standard or were repaired using repair procedures TV5415R or HRS3491, do the following.

(1) Within 500 cycles-in-service (CIS) after the effective date of this AD, but no later than October 1, 2004, inspect for the condition of the ice-impact panels and blue fillers on one or two engines so that no more than one engine with ice-impact panels and fillers that need to be inspected remains on the airplane. Use 3.B.(1) through 3.D.(2) of the Accomplishment Instructions of RRD SB No. TAY–72–1627, Revision 2, dated February 5, 2004.

(2) Within 1,500 CIS after the effective date of this AD, inspect for the condition of the ice-impact panels and blue fillers on the remaining engine. Use 3.B.(1) through 3.D.(2) of the Accomplishment Instructions of RRD SB No. TAY–72–1627, Revision 2, dated February 5, 2004.

(h) For airplanes that have two TAY 611–8 engines with ice-impact panels, incorporated with RR SB No. TAY–72–1326 standard or were repaired using repair procedures TV5415R or HRS3491, do the following.

(1) Within 372 flight hours (FH) after the effective date of this AD inspect the ice-impact panels on one engine. Use 3.B.(1) through 3.D.(1)(a) of the Accomplishment Instructions of RRD SB No. TAY–72–1631, dated February 6, 2004.

(2) Within 900 FH after the effective date of this AD, inspect the ice-impact panels on the remaining engine. Use 3.B.(1) through 3.D.(1)(a) of the Accomplishment Instructions of RRD SB No. TAY–72–1631, dated February 6, 2004.

**Inspecting the Ice-impact Panels for Movement and Moisture on the Panel and Damage to the Blue Filler on Airplanes That Have One Engine With the Affected Ice-impact Panels**

(i) For airplanes that have one TAY 620–15, TAY 650–15, or TAY 651–54 engine with ice-impact panels incorporated with RR SB No. TAY–72–1326 standard or were repaired using repair procedures TV5415R or HRS3491, within 1,500 CIS after the effective date of this AD, inspect for the condition of the ice-impact panels and blue fillers on the engine. Use 3.B.(1) through 3.D.(2) of the Accomplishment Instructions of RRD SB No. TAY–72–1627, Revision 2, dated February 5, 2004.

(j) For airplanes that have one TAY 611–8 engine with ice-impact panels incorporated with RR SB No. TAY–72–1326 standard or

were repaired using repair procedures TV5415R or HRS3491, within 900 FH after the effective date of this AD, inspect for the condition of the ice-impact panels and blue fillers on the engine. Use 3.B.(1) through 3.D.(1)(a) of the Accomplishment Instructions of RRD SB No. TAY–72–1631, dated February 6, 2004.

**Installing Engines That Are Not Inspected**

(k) After the effective date of this AD, do not install any TAY 620–15, TAY 650–15, or TAY 651–54 engine with ice-impact panels, if those ice-impact panels incorporate RR SB No. TAY–72–1326 or were repaired using repair procedures TV5415R or HRS3491, unless the panels and blue fillers are inspected for condition using 3.B.(1) through 3.D.(2) (in-service) or 3.H.(1) through 3.K.(1)(b) (at overhaul or shop visit) of the Accomplishment Instructions of RRD SB No. TAY–72–1627, Revision 2, dated February 5, 2004.

(l) After the effective date of this AD, do not install any TAY 611–8 engine with ice-impact panels, if those ice-impact panels incorporate RR SB No. TAY–72–1326 or were repaired using repair procedures TV5415R or HRS3491, unless the panels are inspected for condition using 3.B.(1) through 3.D.(1)(a) (in-service) or 3.H.(1) through 3.K.(1) (at overhaul or shop visit) of the Accomplishment Instructions of RRD SB No. TAY–72–1631, dated February 6, 2004.

**Alternative Methods of Compliance**

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

**Material Incorporated by Reference**

(n) You must use the service information specified in Table 1 to perform the inspections required by this AD. The Director of the Federal Register approved the incorporation by reference of the documents listed in Table 1 of this AD in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You can get a copy from Rolls-Royce Deutschland Ltd & Co KG, Eschenweg 11, D–15827 Dahlewitz, Germany; telephone 49 (0) 33–7086–1768; fax 49 (0) 33–7086–3356. You may review copies at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. Table 1 follows:

TABLE 1.—INCORPORATION BY REFERENCE

| Service bulletin No. | Page | Revision | Date |
|---|---|---|---|
| TAY–72–1627, Total Pages—22 | All | 2 | February 5, 2004. |
| TAY–72–1631, Total Pages—19 | All | Original | February 6, 2004. |

**Related Information**

(o) Luftfahrt-Bundesamt airworthiness directive (AD) D–2004–055R1, dated January 24, 2004; and AD D–2004–090, dated February 12, 2004; also address the subject of this AD.

Issued in Burlington, Massachusetts, on March 3, 2004.

**Francis A. Favara,**

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

[FR Doc. 04–5263 Filed 3–9–04; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2002–SW–44–AD; Amendment 39–13518; AD 2004–05–23]**

**RIN 2120–AA64**

## Airworthiness Directives; Eurocopter France Model AS350B, AS350BA, AS350B1, AS350B2, AS350B3, AS350C, AS350D, AS350D1, AS355E, AS355F, AS355F1, AS355F2, and AS355N Helicopters

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

**ACTION:** Final rule.

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD) for the specified Eurocopter France (ECF) model helicopters that currently requires certain inspections of the main rotor swashplate bearing (bearing) and plugging the nonrotating swashplate vent holes and barrel nut orifices. This amendment eliminates most of those AD actions, which are now included in the Airworthiness Limitations section of the maintenance manual, but retains the requirements for the inspections and lubrication of the main rotor swashplate. This amendment also clarifies that repetitive maintenance of the main rotor swashplate and bearing is required at intervals not to exceed 100 hours time-in-service (TIS). This amendment is prompted by the need to clarify the AD wording to avoid any misinterpretation of the required interval for inspecting and lubricating the main rotor swashplate and bearing. The actions specified by this AD are intended to prevent failure of the bearing and subsequent loss of control of the helicopter.

**DATES:** Effective April 14, 2004.

**FOR FURTHER INFORMATION CONTACT:** Gary Roach, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Guidance Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5130, fax (817) 222–5961.

**SUPPLEMENTARY INFORMATION:** A proposal to amend 14 CFR part 39 by superseding AD 89–21–01, Docket No. 89–ASW–53, Amendment 39–6562 (55 FR 12332, April 3, 1990), for the specified ECF model helicopters was published in the **Federal Register** on May 16, 2003 (68 FR 26552). AD 89–21–01 requires inspecting the bearing for play or binding, proper assembly and lubrication, and measuring the swashplate rotational torque. In addition, that AD requires plugging the nonrotating swashplate vent holes and barrel nut orifices at specified hours TIS. The requirements of that AD are intended to prevent failure of the bearing, which could result in loss of control of the helicopter.

Since issuing that AD, an FAA inspector reports that the repetitive lubrication requirement in paragraph (c) of AD 89–21–01 requiring lubrication "within every 100 hours' additional time-in-service" is being misinterpreted by a certain operator to only require lubrication every 199 hours rather than the intended 100-hour interval. Therefore, the inspector recommends that AD 89–21–01 be rewritten to clearly state that lubrication of the bearings be required at intervals not to exceed 100 hours TIS. To remove any doubt as to the intended lubrication interval, we have made the suggested changes. The additional requirements contained in AD 89–21–01 for inspecting and servicing the main rotor swashplate are no longer necessary because they are contained currently in the mandatory Airworthiness Limitations section of the Eurocopter Master Servicing Recommendations (maintenance manual) for the Model AS 350, dated April 26, 2001, and for the Model AS 355, dated May 31, 2001.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the one comment received. The commenter suggests that current maintenance instructions are adequate and that no

change to the AD is necessary. The FAA concurs with the comment; however, this change to the AD is necessary to clarify the correct maintenance action.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require adopting the rule as proposed except the labor rate is now estimated to be $65 per work hour rather than $60 as stated in the proposal. The FAA has determined that this change will only minimally increase the economic burden on any operator ($60 per year per helicopter) and will not increase the scope of the AD.

The FAA estimates that this AD will affect 587 helicopters of U.S. registry and that it will take approximately 2 work hours per helicopter to accomplish at an average labor rate of $65 per work hour. Based on these figures, we estimate the total cost impact of the AD on U.S. operators to be $457,860.

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

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action, and it is contained in the Rules Docket at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

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

Air transportation, Aircraft, Aviation safety, Safety.

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

■ 2. Section 39.13 is amended by removing Amendment 39–6562 (55 FR 12332, April 3, 1990) and by adding a new airworthiness directive (AD), to read as follows:

**2004–05–23 Eurocopter France:** Amendment 39–13518, Docket No. 2002–SW–44–AD. Supersedes AD 89–21–01, Amendment 39–6562, Docket No. 89–ASW–53.

*Applicability:* Model AS350B, AS350BA, AS350B1, AS350B2, AS350B3, AS350C, AS350D, AS350D1, AS355E, AS355F, AS355F1, AS355F2, and AS355N helicopters, certificated in any category.

**Note 1:** This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

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

**Note 2:** The current Airworthiness Limitations sections of the Eurocopter AS 350 and AS 355 maintenance manuals contain requirements for inspecting and lubricating the main rotor swashplate at intervals not to exceed 100 hours time-in-service (TIS).

To prevent failure of the main rotor swashplate bearing and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 10 hours time-in-service (TIS) and thereafter at intervals not to exceed 100 hours TIS, inspect and lubricate the main rotor swashplate.

**Note 3:** Eurocopter Master Servicing Recommendations, Airworthiness Limitations section, AS 350, dated April 26, 2001, and AS 355, dated May 31, 2001, pertain to the subject of this AD.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Safety Management Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Safety Management Group.

**Note 4:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Safety Management Group.

(c) Special flight permits will not be issued.

(d) This amendment becomes effective on April 14, 2004.

Issued in Fort Worth, Texas, on March 2, 2004.

**Scott A. Horn,**

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

[FR Doc. 04–5333 Filed 3–9–04; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 314

**[Docket No. 2003N–0417]**

## Application of 30-Month Stays on Approval of Abbreviated New Drug Applications and Certain New Drug Applications Containing a Certification That a Patent Claiming the Drug Is Invalid or Will Not Be Infringed; Technical Amendment

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

**ACTION:** Final rule, technical amendment.

**SUMMARY:** The Food and Drug Administration (FDA) is revoking certain sections of its regulation concerning 30-month stays of approval of abbreviated new drug applications (ANDAs) and certain new drug applications (NDAs) that contain a certification that a patent claiming the drug is invalid or will not be infringed. This action is taken in response to the passage of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 signed December 8, 2003. Title XI, Access to Affordable Pharmaceuticals, contains provisions that supersede sections of the regulation. This action will result in the revocation of 21 CFR 314.52(a)(3) and 21 CFR 314.95(a)(3).

**DATES:** This rule is effective March 10, 2004.

**FOR FURTHER INFORMATION CONTACT:** Jarilyn Dupont, Office of Policy and Planning (HF–11), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3360.

**SUPPLEMENTARY INFORMATION:**

### 1. Background

In the **Federal Register** of June 18, 2003 (68 FR 36676), we (FDA) issued a final rule that amended our patent submission and listing requirements. The final rule revised the regulations regarding the effective date of approval for ANDAs and certain other NDAs,

known as 505(b)(2) applications, submitted under the Federal Food, Drug, and Cosmetic Act (the act). In certain situations, Federal law bars FDA from making the approval of certain ANDAs and 505(b)(2) applications effective for 30 months if the applicant has certified that a patent claiming the drug is invalid or will not be infringed and the patent owner or NDA holder then sues the applicant for patent infringement. The final rule stated that there was only one opportunity for a 30-month stay of the approval date of each ANDA and 505(b)(2) application. The final rule also clarified the types of patents that must and must not be submitted to FDA and revised the declaration that NDA applicants must submit to FDA regarding patents to help ensure that NDA applicants submit only appropriate patents. The final rule became effective on August 18, 2003.

On December 8, 2003, the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173) was signed into law. Title XI, Access to Affordable Pharmaceuticals, subtitle A, section 1101 (Public Law 108–173) contains provisions that supersede sections of the regulation issued in the June 18, 2003, final rule (68 FR 36676). The new statutory provisions address the effective date of approval for certain ANDAs and 505(b)(2) applications and prohibit approval for 30 months if the applicant has certified that a patent claiming the drug is invalid or will not be infringed, and the patent owner or NDA holder then sues the applicant for patent infringement. The effective date of these provisions was made retroactive to August 18, 2003. The new statutory provisions address the applicability of 30-month stays in approval of certain ANDAs and 505(b)(2) applications in a different manner than our final rule, which was issued under statutory language now superseded.

Therefore, certain regulations issued in the final rule published on June 18, 2003 (68 FR 36676) are superseded by the new statutory provisions. The affected sections of the regulation are 21 CFR 314.52(a)(3) and 21 CFR 314.95(a)(3) that stay the effective date of approval for certain ANDAs and 505(b)(2) applications for 30 months in certain situations.

In accordance with the new statutory provisions, we are revoking the applicable sections of the regulation. Publication of this document constitutes final action under the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)).

**List of Subjects in 21 CFR Part 314**

Administrative practice and procedure, Confidential business information, Drugs, Reporting and recordkeeping requirements.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs, 21 CFR 314 is amended as follows:

## PART 314—APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG

■ 1. The authority citation for 21 CFR part 314 continues to read as follows:

**Authority:** 21 U.S.C. 321, 331, 351, 352, 353, 355, 355a, 356, 356a, 356b, 356c, 371, 374, 379e.

**§ 314.52 [Amended]**

■ 2. Section 314.52 is amended by removing paragraph (a)(3) and redesignating paragraph (a)(4) as paragraph (a)(3).

**§ 314.95 [Amended]**

■ 3. Section 314.95 is amended by removing paragraph (a)(3) and redesignating paragraph (a)(4) as paragraph (a)(3) .

Dated: March 1, 2004.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 04–5407 Filed 3–9–04; 8:45 am]

BILLING CODE 4160–01–S

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Parts 803, 806, 807, 814, 820, and 1005

### Medical Device Reports; Reports of Corrections and Removals; Establishment Registration and Device Listing: Premarket Approval Supplements; Quality System Regulation; Importation of Electronic Products; Technical Amendment

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

**ACTION:** Final rule; technical amendment.

**SUMMARY:** The Food and Drug Administration (FDA) is correcting certain regulations in 21 CFR parts 803, 806, 807, 814, 820, and 1005. This rule corrects some inadvertent typographical errors and some technical errors, and it is intended to improve the accuracy of the agency's regulations.

**EFFECTIVE DATE:** March 10, 2004.

**FOR FURTHER INFORMATION CONTACT:** Joseph M. Sheehan, Center for Devices and Radiological Health, Food and Drug Administration, HFZ–215, Piccard Dr., Rockville, MD 20850, 301–827–2974.

**SUPPLEMENTARY INFORMATION:**

### I. Highlights of Final Rule

FDA is making the following changes in several regulations concerning medical devices and radiological health to correct errors, and update addresses and form numbers:

1. FDA is revising 21 CFR 803.18(e) to eliminate a reference to 21 CFR 820.162, a section which no longer exists.

2. FDA is amending §§ 806.10(f), 820.198(d), and 820.200(c) to eliminate references to 21 CFR part 804, a part which no longer exists.

3. FDA is revising the FDA forms numbers listed in certain sections of part 807 (21 CFR part 807), specifically §§ 807.22, 807.25, 807.26, 807.30, 807.35, and 807.37, to identify the forms correctly.

4. FDA is updating the address in § 807.22 (a).

5. FDA is amending § 807.26 to conform to FDA's existing procedure. Changes made between annual registration periods are now done by submitting a letter and need not be submitted on a specific form.

6. FDA is updating the address in § 807.37 (a) and (b)(2).

7. FDA is amending § 807.30 by removing references to block numbers for FDA forms. FDA has changed these forms from time to time and, therefore, the numbers are no longer accurate.

8. FDA is amending § 814.39 by moving part of § 814.39(f) to § 814.39(e). This paragraph was inadvertently placed in paragraph (f) after an amendment published on October 8 1998 (63 FR 54043).

9. FDA is amending § 1005.3 by replacing the references to section 358 of the act with section "534 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360kk)." This correction conforms to the redesignation of this section by the Safe Medical Devices Act of 1990.

### II. Environmental Impact

The agency has determined under 21 CFR 25.30(i) that this final rule is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement was required. The changes in these amendments do not alter this conclusion.

### III. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive order. In addition, the final rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this rule only corrects errors in existing regulations and does not change in any way how devices are regulated, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

### IV. Paperwork Reduction Act of 1995

FDA has determined that this final rule contains no additional collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

### V. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

### VI. The Technical Amendment

This rule corrects certain minor errors in existing regulations. This administrative action is limited to changing references to form numbers and block numbers on forms, changing an address to submit information to FDA, eliminating references to no longer existent sections and parts, and realigning two paragraphs to correct a typographical error, but it makes no changes in substantive requirements.

This document is published as a final rule with the effective date given previously. Because the final rule is an administrative action, FDA has determined that it has no substantive impact on the public. It imposes no costs, and merely makes technical administrative changes in the Code of Federal Regulations (CFR) for the convenience of the public. FDA, therefore, for good cause, finds under 5 U.S.C. 553(b)(3)(B) and (d)(3) that notice and public comment are unnecessary.

### List of Subjects

*21 CFR Part 803*

Imports, Medical devices, Reporting and recordkeeping requirements.

*21 CFR Part 806*

Imports, Medical devices, Reporting and recordkeeping requirements.

*21 CFR Part 807*

Confidential business information, Imports, Medical devices, Reporting and recordkeeping requirements.

*21 CFR Part 814*

Administrative practice and procedure, Confidential business information, Medical devices, Medical research, Reporting and recordkeeping requirements.

*21 CFR Part 820*

Medical devices, Reporting and recordkeeping requirements.

*21 CFR Part 1005*

Administrative practice and procedure, Electronic products, Imports, Radiation protection, Surety bonds.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 803, 806, 807, 814, 820, and 1005 are amended as follows:

## PART 803—MEDICAL DEVICE REPORTING

■ 1. The authority section for part 803 continues to read as follows:

**Authority:** 21 U.S.C. 352, 360, 360i, 360j, 371, 374.

■ 2. Section 803.18(e) is revised to read as follows:

**§ 803.18 Files and distributor records.**

* * * * *

(e) The manufacturer may maintain MDR event files as part of its complaint file, under § 820.198 of this chapter, provided that such records are prominently identified as MDR reportable events. A report submitted under this subpart A shall not be considered to comply with this part unless the event has been evaluated in accordance with the requirements of § 820.198 of this chapter. MDR files shall contain an explanation of why any information required by this part was not submitted or could not be obtained. The results of the evaluation of each event are to be documented and maintained in the manufacturer's MDR event file.

## PART 806—MEDICAL DEVICES; REPORTS OF CORRECTIONS AND REMOVALS

■ 3. The authority section for part 806 continues to read as follows:

**Authority:** 21 U.S.C. 352, 360, 360i, 360j, 371, 374.

■ 4. Section 806.10(f) is revised to read as follows:

**§ 806.10 Reports of corrections and removals.**

* * * * *

(f) No report of correction or removal is required under this part, if a report of the correction or removal is required and has been submitted under parts 803 or 1004 of this chapter.

## PART 807—ESTABLISHMENT REGISTRATION AND DEVICE LISTING FOR MANUFACTURERS AND INITIAL IMPORTERS OF DEVICES

■ 5. The authority citation for 21 CFR part 807 continues to read as follows:

**Authority:** 21 U.S.C. 331, 351, 352, 360, 360c, 360e, 360i, 360j, 371, 374.

■ 6. Section 807.22 is amended by revising paragraph (b) to read as follows:

**§ 807.22 How and where to register establishments and list devices.**

* * * * *

(b) The initial listing of devices and subsequent June and December updatings shall be on form FDA–2892 (Medical Device Listing). Forms are obtainable upon request as described in paragraph (a) of this section. A separate form FDA–2892 shall be submitted for each device or device class listed with the Food and Drug Administration. Devices having variations in physical characteristics such as size, package, shape, color, or composition should be considered to be one device: *Provided*, The variation does not change the

function or intended use of the device. In lieu of form FDA–2892, tapes for computer input or hard copy computer output may by submitted if equivalent in all elements of information as specified in form FDA–2892. All formats proposed for use in lieu of form FDA–2892 require initial review and approval by the Food and Drug Administration.

* * * * *

■ 7. Section 807.25 is amended by revising paragraphs (a) and (f)(1), (f)(2), and (f)(6), and (f)(7) as follows:

**§ 807.25 Information required or requested for establishment registration and device listing.**

(a) Form FDA–2891 and Form FDA–2891(a) are the approved forms for initially providing the information required by the act and for providing annual registration, respectively. The required information includes the name and street address of the device establishment, including post office code, all trade names used by the establishment, and the business trading name of the owner or operator of such establishment.

* * * * *

(f)* * *

(1) The identification by classification name and number, proprietary name, and common or usual name of each device being manufactured, prepared, propagated, compounded, or processed for commercial distribution that has not been included in any list of devices previously submitted on form FDA–2892.

(2) The Code of Federal Regulations citation for any applicable standard for the device under section 514 of the act or section 358 of the Public Health Service Act.

* * * * *

(6) Other general information requested on form FDA–2892, i.e.,

(i) If the submission refers to a previously listed device, as in the case of an update, the document number from the initial listing document for the device,

(ii) The reason for submission,

(iii) The date on which the reason for submission occurred,

(iv) The date that the form FDA–2892 was completed,

(v) The owner's or operator's name and identification number.

(7) Labeling or other descriptive information (e.g., specification sheets or catalogs) adequate to describe the intended use of a device when the owner or operator is unable to find an appropriate FDA classification name for the device.

■ 8. Section 807.26 is revised to read as follows:

**§ 807.26 Amendments to establishment registration.**

Changes in individual ownership, corporate or partnership structure, or location of an operation defined in § 807.3(c) shall be submitted on Form FDA–2891(a) at the time of annual registration, or by letter if the changes occur at other times. This information shall be submitted within 30 days of such changes. Changes in the names of officers and/or directors of the corporation(s) shall be filed with the establishment's official correspondent and shall be provided to the Food and Drug Administration upon receipt of a written request for this information.

■ 9. Section 807.30 is revised to read as follows:

**§ 807.30 Updating device listing information.**

(a) Form FDA–2892 shall be used to update device listing information. The preprinted original document number of each form FDA–2892 on which the device was initially listed shall appear on the form subsequently used to update the listing information for the device and on any correspondence related to the device.

(b) An owner or operator shall update the device listing information during each June and December or, at its discretion, at the time the change occurs. Conditions that require updating and information to be submitted for each of these updates are as follows:

(1) If an owner or operator introduces into commercial distribution a device identified with a classification name not currently listed by the owner or operator, then the owner or operator must submit form FDA–2892 containing all the information required by § 807.25(f).

(2) If an owner or operator discontinues commercial distribution of all devices in the same device class, i.e., with the same classification name, the owner or operator must submit form FDA–2892 containing the original document number of the form FDA–2892 on which the device class was initially listed, the reason for submission, the date of discontinuance, the owner or operator's name and identification number, the classification name and number, the proprietary name, and the common or usual name of the discontinued device.

(3) If commercial distribution of a discontinued device identified on a form FDA–2892 filed under paragraph (b)(2) of this section is resumed, the owner or operator must submit on form FDA–2892 a notice of resumption containing: the original document number of the form initially used to list that device class, the reason for submission, date of resumption, and all other information required by § 807.25(f).

(4) If one or more classification names for a previously listed device with multiple classification names has been added or deleted, the owner or operator must supply the original document number from the form FDA–2892 on which the device was initially listed and a supplemental sheet identifying the names of any new or deleted classification names.

(5) Other changes to information on form FDA–2892 will be updated as follows:

(i) Whenever a change occurs only in the owner or operator name or number, e.g., whenever one company's device line is purchased by another owner or operator, it will not be necessary to supply a separate form FDA–2892 for each device. In such cases, the new owner or operator must follow the procedures in § 807.26 and submit a letter informing the Food and Drug Administration of the original document number from form FDA–2892 on which each device was initially listed for those devices affected by the change in ownership.

(ii) The owner or operator must also submit update information whenever establishment registration numbers, establishment names, and/or activities are added to or deleted from form FDA 2892. The owner or operator must supply the original document number from the form FDA–2892 on which the device was initially listed, the reason for submission, and all other information required by § 807.25(f).

(6) Updating is not required if the above information has not changed since the previously submitted list. Also, updating is not required if changes occur in proprietary names, in common or usual names, or to supplemental lists of unclassified components or accessories.

■ 10. Section 807.35 is revised to read as follows:

**§ 807.35 Notification of registrant.**

(a) The Commissioner will provide to the official correspondent, at the address listed on the form, a validated copy of Form FDA–2891 or Form FDA–2891(a) (whichever is applicable) as evidence of registration. A permanent registration number will be assigned to each device establishment registered in accordance with these regulations.

(b) Owners and operators of device establishments who also manufacture or

process blood or drug products at the same establishment shall also register with the Center for Biologics Evaluation and Research and Center for Drug Evaluation and Research, as appropriate. Blood products shall be listed with the Center for Biologics Evaluation and Research, Food and Drug Administration, pursuant to part 607 of this chapter; drug products shall be listed with the Center for Drug Evaluation and Research, Food and Drug Administration, pursuant to part 207 of this chapter.

(c) Although establishment registration and device listing are required to engage in the device activities described in § 807.20, validation of registration and the assignment of a device listing number in itself does not establish that the holder of the registration is legally qualified to deal in such devices and does not represent a determination by the Food and Drug Administration as to the status of any device.

■ 11. Section 807.37 is revised to read as follows:

**§ 807.37 Inspection of establishment registration and device listings.**

(a) A copy of the forms FDA–2891 and FDA–2891a filed by the registrant will be available for inspection in accordance with section 510(f) of the act, at the Center for Devices and Radiological Health (HFZ–308), Food and Drug Administration, Department of Health and Human Services, 9200 Corporate Blvd., Rockville, MD 20850–4015. In addition, there will be available for inspection at each of the Food and Drug Administration district offices the same information for firms within the geographical area of such district office. Upon request, verification of registration number or location of a registered establishment will be provided.

(b)(1) The following information filed under the device listing requirements will be available for public disclosure:

(i) Each form FDA–2892 submitted;

(ii) All labels submitted;

(iii) All labeling submitted;

(iv) All advertisements submitted;

(v) All data or information that has already become a matter of public knowledge.

(2) Requests for device listing information identified in paragraph (b)(1) of this section should be directed to the Center for Devices and Radiological Health (HFZ–308), Food and Drug Administration, Department of Health and Human Services, 9200 Corporate Blvd., Rockville, MD 20850–4015.

(3) Requests for device listing information not identified in paragraph (b)(1) of this section shall be submitted and handled in accordance with part 20 of this chapter.

## PART 814—PREMARKET APPROVAL OF MEDICAL DEVICES

■ 12. The authority citation for 21 CFR part 814 continues to read as follows:

**Authority:** 21 U.S.C. 351, 352, 353, 360, 360c–360j, 371, 372, 373, 374, 375, 379, 379e, 381.

■ 13. Section 814.39 is amended by revising paragraphs (e) and (f) to read as follows:

**§ 814.39 PMA supplements.**

* * * * *

(e)(1) FDA will identify a change to a device for which an applicant has an approved PMA and for which a PMA supplement under paragraph (a) is not required. FDA will identify such a change in an advisory opinion under § 10.85, if the change applies to a generic type of device, or in correspondence to the applicant, if the change applies only to the applicant's device. FDA will require that a change for which a PMA supplement under paragraph (a) is not required be reported to FDA in:

(i) A periodic report under § 814.84 or

(ii) A 30-day PMA supplement under this paragraph.

(2) FDA will identify, in the advisory opinion or correspondence, the type of information that is to be included in the report or 30-day PMA supplement. If the change is required to be reported to FDA in a periodic report, the change may be made before it is reported to FDA. If the change is required to be reported in a 30-day PMA supplement, the change may be made 30 days after FDA files the 30-day PMA supplement unless FDA requires the PMA holder to provide additional information, informs the PMA holder that the supplement is not approvable, or disapproves the supplement. The 30-day PMA supplement shall follow the instructions in the correspondence or advisory opinion. Any 30-day PMA supplement that does not meet the requirements of the correspondence or advisory opinion will not be filed and, therefore, will not be deemed approved 30 days after receipt.

(f) Under section 515(d) of the act, modifications to manufacturing procedures or methods of manufacture that affect the safety and effectiveness of a device subject to an approved PMA do not require submission of a PMA supplement under paragraph (a) of this section and are eligible to be the subject of a 30-day notice. A 30-day notice shall describe in detail the change, summarize the data or information supporting the change, and state that the change has been made in accordance with the requirements of part 820 of this chapter. The manufacturer may distribute the device 30 days after the date on which FDA receives the 30-day notice, unless FDA notifies the applicant within 30 days from receipt of the notice that the notice is not adequate. If the notice is not adequate, FDA shall inform the applicant in writing that a 135-day PMA supplement is needed and shall describe what further information or action is required for acceptance of such change. The number of days under review as a 30-day notice shall be deducted from the 135-day PMA supplement review period if the notice meets appropriate content requirements for a PMA supplement.

## PART 820—QUALITY SYSTEM REGULATION

■ 14. The authority citation for 21 CFR part 820 continues to read as follows:

**Authority:** 21 U.S.C. 351, 352, 360, 360c, 360d, 360e, 360h, 360i, 360j, 360l 371, 374, 381, 383.

■ 15. Section 820.198(d) is revised to read as follows

**§ 820.198 Complaint files.**

* * * * *

(d) Any complaint that represents an event which must be reported to FDA under part 803 of this chapter shall be promptly reviewed, evaluated, and investigated by a designated individual(s) and shall be maintained in a separate portion of the complaint files or otherwise clearly identified. In addition to the information required by § 820.198(e), records of investigation under this paragraph shall include a determination of:

(1) Whether the device failed to meet specifications;

(2) Whether the device was being used for treatment or diagnosis; and

(3) The relationship, if any, of the device to the reported incident or adverse event.

* * * * *

■ 16. Section 820.200(c) is revised to read as follows:

**§ 820.200 Servicing.**

* * * * *

(c) Each manufacturer who receives a service report that represents an event which must be reported to FDA under part 803 of this chapter shall automatically consider the report a complaint and shall process it in accordance with the requirements of § 820.198.

* * * * *

## PART 1005—IMPORTATION OF ELECTRONIC PRODUCTS

■ 17. The authority citation for 21 CFR part 1005 continues to read as follows:

**Authority:** 42 U.S.C. 263d, 263h.

■ 18. Section 1005.3 is revised to read as follows:

**§ 1005.3 Importation of noncomplying goods prohibited.**

The importation of any electronic product for which standards have been prescribed under section 534 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360kk) shall be refused admission into the United States unless there is affixed to such product a certification in the form of a label or tag in conformity with section 534(h) of the act (21 U.S.C. 360kk(h)). Merchandise refused admission shall be destroyed or exported under regulations prescribed by the Secretary of the Treasury unless a timely and adequate petition for permission to bring the product into compliance is filed and granted under §§ 1005.21 and 1005.22.

Dated: March 2, 2004.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 04–5302 Filed 3–9–04; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### 24 CFR Parts 21 and 24

**[Docket No. FR–4692–C–3]**

**RIN 2501–AC81**

### Suspension, Debarment, Limited Denial of Participation and Drug-Free Workplace; Technical Correction

**AGENCY:** Office of the General Counsel, HUD.

**ACTION:** Final rule; technical correction.

**SUMMARY:** On November 26, 2003, HUD published a final rule adopting the Interagency Suspension and Debarment Committee's 2003 enactment of a Nonprocurement Common Rule for Suspensions and Debarments (NCR) as well as Drug-Free Workplace regulations. The Department's adoption of the NCR also contained agency specific provisions. This document corrects the final rule by replacing reserved sections with previously published agency specific information and providing agency specific citations.

**DATES:** Effective Date: November 26, 2003.

**FOR FURTHER INFORMATION CONTACT:** Dane Narode, Assistant General Counsel, Office of Program Enforcement, Administrative Proceedings Division, Department of Housing and Urban Development, 1250 Maryland Avenue, Suite 200, Washington, DC 20024; telephone (202) 708–2350 (this is not a toll-free number); e-mail: *Dane_M._Narode@HUD.gov*. Hearing-impaired or speech-impaired individuals may access the voice telephone number listed above by calling the Federal Information Relay Service toll-free at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:** On November 26, 2003 (68 FR 66534), HUD published a final rule adopting the Interagency Suspension and Debarment Committee's NCR, Drug-Free Workplace regulations and enacting agency specific additions to those common rules. In four instances, agency specific provisions were not inserted where necessary to comport with the common rule format.

■ Accordingly, HUD's adoption of, and additions to, the Governmentwide Debarment and Suspension (Nonprocurement) and Requirements for Drug-Free Workplace (Grants) Rules (FR–4692–F–01) published in the **Federal Register** on November 26, 2003 (FR Doc. 03–28454) is correctly amended as follows:

**§ 21.510 [Amended]**

■ 1. Section 21.510(c) on page 66559 is further amended by removing "[CFR citation for the Federal Agency's regulations implementing Executive Order 12549 and Executive Order 12689]" and adding "24 CFR part 24" in its place.

**§ 21.605 [Amended]**

■ 2. Section 21.605(a)(2) on page 66560 is further amended by removing "[Agency specific CFR citation]" and adding "24 CFR part 24" in its place.

**§ 24.25 [Amended]**

■ 3. Section 24.25(a) on page 66545 is further amended by removing "[Reserved]" and adding "Limited Denial of Participation" in its place.

■ 4. Section 24.25(b)(7) on page 66546 is further amended by removing "Reserved" and adding "involved in HUD transactions" in its place.

Dated: March 3, 2004.

**Aaron Santa Anna,**

*Assistant General Counsel for Regulations.*

[FR Doc. 04–5397 Filed 3–9–04; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

### 30 CFR Part 946

### Virginia

*CFR Correction*

In Title 30 of the Code of Federal Regulations, part 700 to end, revised as of July 1, 2003, on page 659, § 946.16 is removed.

[FR Doc. 04–55502 Filed 3–9–03; 8:45 am]

**BILLING CODE 1505–01–D**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[COTP San Francisco Bay 03–029]**

**RIN 1625–AA00**

### Security Zones; San Francisco Bay, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is establishing fixed security zones extending 25 yards in the U.S. navigable waters around all piers, abutments, fenders and pilings of the Golden Gate Bridge and the San Francisco-Oakland Bay Bridge, in San Francisco Bay, California. These security zones are needed for national security reasons to protect the public and ports from potential subversive acts. Entry into these security zones is prohibited, unless doing so is necessary for safe navigation, to conduct official business such as scheduled maintenance or retrofit operations, or unless specifically authorized by the Captain of the Port San Francisco Bay or his designated representative.

**DATES:** This rule is effective April 9, 2004.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket 03–029 and are available for inspection or copying at the Waterways Management Branch between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Doug Ebbers, Waterways Management Branch, U.S. Coast Guard Marine Safety Office San Francisco Bay, (510) 437–3073.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

On March 19, 2003, we published a rule in the **Federal Register** (68 FR 13228) creating temporary § 165.T11–078 of Title 33 of the Code of Federal Regulations (CFR). Under temporary § 165.T11–078, which expired at 11:59 p.m. P.d.t. on September 30, 2003, the Coast Guard established 25-yard fixed security zones around all piers, abutments, fenders and pilings of the Golden Gate Bridge and the San Francisco-Oakland Bay Bridge, San Francisco Bay, California.

On September 25, 2003, a change in effective period temporary rule was published in the **Federal Register** (68 FR 55312) under the same previous temporary section 165.T11–078, extending the rule to 11:59 p.m. P.s.t. on March 31, 2004.

On November 25, 2003, we published a notice of proposed rulemaking (NPRM) in the **Federal Register** (68 FR 66064), proposing to establish permanent, fixed security zones extending 25 yards in the U.S. navigable waters around all piers, abutments, fenders and pilings of the Golden Gate Bridge and the San Francisco-Oakland Bay Bridge, San Francisco Bay, California. We received no letters commenting on the proposed rule. No public hearing was requested, and none was held.

**Penalties for Violating Security Zone**

Vessels or persons violating this section will be subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192. Pursuant to 33 U.S.C. 1232, any violation of the security zones described herein, is punishable by civil penalties (not to exceed $27,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment up to 6 years and a maximum fine of $250,000), and in rem liability against the offending vessel. Any person who violates this section, using a dangerous weapon, or who engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce this regulation, also faces imprisonment up to 12 years. Vessels or persons violating this section are also subject to the penalties set forth in 50 U.S.C. 192: seizure and forfeiture of the vessel to the United States, a maximum criminal fine of $10,000, and imprisonment up to 10 years.

The Captain of the Port will enforce these zones and may enlist the aid and cooperation of any Federal, State, county, municipal, and private agency to assist in the enforcement of the regulation.

**Background and Purpose**

Since the September 11, 2001 terrorist attacks on the World Trade Center in New York, the Pentagon in Arlington, Virginia, and Flight 93, the Federal Bureau of Investigation (FBI) has issued several warnings concerning the potential for additional terrorist attacks within the United States. In addition, the ongoing hostilities in Afghanistan and the conflict in Iraq have made it prudent for U.S. ports to be on a higher state of alert because Al-Qaeda and other organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

In its effort to thwart terrorist activity, the Coast Guard has increased safety and security measures on U.S. ports and waterways. As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399), Congress amended section 7 of the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1226, to allow the Coast Guard to take actions, including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels or public or commercial structures. The Coast Guard also has authority to establish security zones pursuant to the Act of June 15, 1917, as amended by the Magnuson Act of August 9, 1950 (50 U.S.C. 191 *et seq.*) and implementing regulations promulgated by the President in subparts 6.01 and 6.04 of part 6 of title 33 of the Code of Federal Regulations.

In this particular rulemaking, to address the aforementioned security concerns and to take steps to prevent the catastrophic impact that a terrorist attack against the Golden Gate Bridge or San Francisco-Oakland Bay Bridge would have on the public, the Coast Guard is establishing fixed security zones extending 25 yards in the U.S. navigable waters around all piers, abutments, fenders and pilings. These security zones help the Coast Guard to prevent vessels or persons from engaging in terrorist actions against these two bridges. In addition to restricting access to critical parts of bridge structures, these security zones provide necessary standoff distance for blast and collision, a surveillance and detection perimeter, and a margin of response time for security personnel.

This rule prohibits entry of any vessel or person inside the security zone without specific authorization from the Captain of the Port or his designated representative. Due to heightened security concerns, and the catastrophic impact a terrorist attack on one of these bridges would have on the public, the transportation system, and surrounding areas and communities, security zones are prudent for these structures.

**Discussion of Comments and Changes**

We received no letters commenting on this rule. No public hearing was requested, and none was held. Accordingly, we have not changed our final rule from the rule we proposed in November 2003.

**Regulatory Evaluation**

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. Although this rule restricts access to the waters encompassed by the security zones, the effect of this rule is not significant because: (i) the zones encompass only a small portion of the waterway; (ii) vessels are able to pass safely around the zones; and (iii) vessels may be allowed to enter these zones on a case-by-case basis with permission of the Captain of the Port or his designated representative.

The size of the zones is the minimum necessary to provide adequate protection for the bridges. The entities most likely to be affected are commercial vessels transiting the main ship channel en route to the San Francisco Bay and Delta ports, fishing vessels, and pleasure craft engaged in recreational activities and sightseeing.

**Small Entities**

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. We

expect this rule may affect owners and operators of private vessels, some of which may be small entities, intending to fish or sightsee near bridge pilings or abutments affected by these security zones. The security zones will not have a significant economic impact on a substantial number of small entities for several reasons: small vessel traffic will be able to pass safely around the area and vessels engaged in recreational activities, sightseeing and commercial fishing have ample space outside of the security zones to engage in these activities. Small entities and the maritime public will be advised of these security zones via public notice to mariners.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

**Collection of Information**

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

**Federalism**

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

**Unfunded Mandates Reform Act**

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

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

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

**Indian Tribal Governments**

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

**Energy Effects**

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

**Environment**

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because we are establishing a security zone. An "Environmental Analysis Check List" and a "Categorical Exclusion Determination" (CED) are available in the docket where indicated under **ADDRESSES.**

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

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

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

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

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

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

■ 2. Add § 165.1187, to read as follows:

**§ 165.1187 Security Zones; Golden Gate Bridge and the San Francisco-Oakland Bay Bridge, San Francisco Bay, California.**

(a) *Location.* All waters extending from the surface to the sea floor, within 25 yards of all piers, abutments, fenders and pilings of the Golden Gate Bridge and the San Francisco-Oakland Bay Bridge, in San Francisco Bay, California.

(b) *Regulations.* (1) In accordance with the general regulations in § 165.33 of this part, entry into these security zones is prohibited, unless doing so is necessary for safe navigation, to conduct official business such as scheduled maintenance or retrofit operations, or unless specifically authorized by the Captain of the Port San Francisco Bay or his designated representative.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port at telephone number 415–399–3547 or on VHF–FM channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

(c) *Enforcement.* All persons and vessels shall comply with the

instructions of the Coast Guard Captain of the Port or the designated on-scene patrol personnel. Patrol personnel comprise commissioned, warrant, and petty officers of the Coast Guard onboard Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels. Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: February 25, 2004.

**Gerald M. Swanson,**

*Captain, U.S. Coast Guard, Captain of the Port, San Francisco Bay, California.*

[FR Doc. 04–5349 Filed 3–9–04; 8:45 am]

BILLING CODE 4910–15–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[OPP–2004–0028; FRL–7345–3]

## Pyriproxyfen; Pesticide Tolerance for Emergency Exemption

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes a time-limited tolerance for residues of pyriproxyfen in or on celery. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on celery. This regulation establishes a maximum permissible level for residues of pyriproxyfen in this food commodity. The tolerance will expire and is revoked on June 30, 2007.

**DATES:** This regulation is effective March 10, 2004. Objections and requests for hearings, identified by docket ID number OPP–2004–0028, must be received on or before May 10, 2004.

**ADDRESSES:** Written objections and hearing requests may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit VII. of the **SUPPLEMENTARY INFORMATION.**

**FOR FURTHER INFORMATION CONTACT:** Libby Pemberton, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9364; e-mail address: *sec-18-mailbox@epamail.epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

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

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

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

*B. How Can I Get Copies of this Document and Other Related Information?*

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0028. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.* A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html,* a beta site currently under development.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

### II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(e) and 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing a tolerance for residues of the insecticide pyriproxyfen, 2-[1-methyl-2(4-phenoxyphenoxy) ethoxypyridine], in or on celery at 2.5 parts per million (ppm). This tolerance will expire and is revoked on June 30, 2007. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18 related tolerances to set binding precedents for the application of section 408 of the FFDCA and the new safety standard to other tolerances and exemptions. Section 408(e) of the FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, i.e., without having received any petition from an outside party.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of the FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA

to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Section 18 of the FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by the Food Quality Protection Act of 1996 (FQPA). EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

## III. Emergency Exemption for Pyriproxyfen on Celery and FFDCA Tolerances

None of the currently registered alternatives were effective in controlling the severe greenhouse whitefly (*Trialeurodes vaporariorum*) and silverleaf whitefly (*Bemisia argentifolii*) infestations that occurred on California celery 2001–02 where some fields experienced a 100% loss. The state estimates that California celery growers, without pyriproxyfen, would lose $1,493 per acre for the coming season. For the affected 11,000 acres this would represent a loss of $16,423,000. EPA has authorized under FIFRA section 18 the use of pyriproxyfen on celery for control of greenhouse whitefly (*Trialeurodes vaporariorum*) and silverleaf whitefly (*Bemisia argentifolii*) in California. After having reviewed the submission, EPA concurs that emergency conditions exist for this State.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of pyriproxyfen in or on celery. In doing so, EPA considered the safety standard in section 408(b)(2) of the FFDCA, and EPA decided that the necessary tolerance under section 408(l)(6) of the FFDCA would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment as provided in section 408(l)(6) of the FFDCA. Although this tolerance will expire and is revoked on June 30, 2007, under section 408(l)(5) of the FFDCA, residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on celery after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by this tolerance at the time of that application. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this tolerance is being approved under emergency conditions, EPA has not made any decisions about whether pyriproxyfen meets EPA's registration requirements for use on celery or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this tolerance serves as a basis for registration of pyriproxyfen by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any State other than California to use this pesticide on this crop under section 18 of FIFRA without following all provisions of EPA's regulations implementing FIFRA section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for pyriproxyfen, contact the Agency's Registration Division at the address provided under FOR FURTHER INFORMATION CONTACT.

## IV. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of pyriproxyfen and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for a time-limited tolerance for residues of pyriproxyfen in or on celery at 2.5 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

### *A. Toxicological Endpoints*

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies reviewed as well as the nature of the toxic effects caused by pyriproxyfen are discussed in Unit III.A. of the **Federal Registers** of June 5, 2001 (66 FR 30065) (FRL–6782–5), August 28, 2002 (67 FR 55150) (FRL–7195–7), and March 7, 2003 (68 FR 10972) (FRL–7289–6).

Refer to the March 7, 2003, **Federal Register** document for a detailed discussion of the aggregate risk assessments and determination of safety. EPA relies upon that risk assessment and the findings made in the **Federal Register** document in support of this action. Below is a brief summary of the aggregate risk assessment, including this use on celery.

### *B. Exposure Assessment*

EPA assessed risk scenarios for pyriproxyfen under chronic and intermediate and short-term (residential) scenarios. Because there were no acute endpoints identified, an acute risk assessment was not conducted. Nor was a cancer aggregate risk assessment conducted, because pyriproxyfen is classified as "not likely" to be a human carcinogen.

The Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the Department of Agricultural (USDA) 1994–1996 and 1998 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity.

The following assumptions were made for the chronic exposure assessments: Published and proposed tolerance level residues and 100% crop treated were assumed for all commodities, and the default processing factors were applied.

Using these exposure assumptions, EPA concluded that pyriproxyfen chronic exposures from food consumption are below levels of concern (< 100% of the chronic Population Adjusted Dose (cPAD)) for the general U.S. population and all population subgroups. The cPAD utilized for the most highly exposed subgroup (children 1–2 years old) is 4%. Chronic risk from dietary exposure for infants (< 1 year old) and children (6–12 years old) each utilize 2.0% of the cPAD. Chronic dietary risk for the general U.S. population is 1.0% of the cPAD. In addition, despite the potential for chronic dietary exposure to

pyriproxyfen in drinking water, after calculating drinking water levels of concern (DWLOCs) and comparing them to conservative model estimated environmental concerns (EEC) of pyriproxyfen in surface and ground waters, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following table:

TABLE 1.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO PYRIPROXYFEN

| Population Subgroup | Aggregate MOE (Food + Residential) | Aggregate Level of Concern (LOC) | Surface Water EEC (ppb) | Ground Water EEC (ppb) | Short-Term DWLOC (ppb) |
|---|---|---|---|---|---|
| General U. S. Population | 8,816 | 100 | 0.4 | 0.006 | 12,000 |
| All infants <1 year | 1,029 | 100 | 0.4 | 0.006 | 3,400 |
| Children 1–2 years | 853 | 100 | 0.4 | 0.006 | 3,400 |
| Children 3–5 years | 936 | 100 | 0.4 | 0.006 | 3,400 |
| Females 13–49 years old | 12,390 | 100 | 0.4 | 0.006 | 10,000 |

Short-term and intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, flea and tick control on pets).

Pyriproxyfen is currently registered for various residential non-dietary sites, and is used for flea and tick control (home environment and pet treatments) as well as products for ant and roach control. Pet owners could potentially be exposed to pyriproxyfen during applications to pets; however, since no short-term dermal or inhalation endpoints were identified, only a post-application residential assessment was conducted. Both adults and toddlers could potentially be exposed to pyriproxyfen residues on treated carpets, floors, upholstery, and pets, but it is anticipated that toddlers will have higher exposures than adults due to behavior patterns. Therefore, the residential risk assessment addressed post-application exposures of toddlers, which is considered to be a worst-case scenario. Short-term, intermediate-term, and long-term toddler hand-to-mouth exposures (consisting of petting treated animals and touching treated carpets/flooring) were assessed; long-term dermal exposures were also assessed for products with anticipated efficacy of more than 6 months (carpet powders and pet collars). Toddler exposures to combined treatment scenarios, where a pet owner treats the home environment and the pet in the same period were also assessed.

The Agency has determined that it is appropriate to aggregate chronic food and water, and short-term or intermediate-term exposures for pyriproxyfen. Using the exposure assumptions described above for short-term and intermediate-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOEs as shown in the following tables:

TABLE 2.—AGGREGATE RISK ASSESSMENT FOR SHORT-TERM EXPOSURE TO PYRIPROXYFEN

| Population Subgroup | Aggregate MOE (Food + Residential) | Aggregate Level of Concern (LOC) | Surface Water EEC (ppb) | Ground Water EEC (ppb) | Short-Term DWLOC (ppb) |
|---|---|---|---|---|---|
| All infants (<1 year) | 2,900 | 100 | 0.4 | 0.006 | 9,400 |
| Children 1–2 years | 2,900 | 100 | 0.4 | 0.006 | 9,400 |
| Children 3–5 years | 600 | 100 | 0.4 | 0.006 | 9,400 |

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR INTERMEDIATE-TERM EXPOSURE TO PYRIPROXYFEN

| Population Subgroup | Aggregate MOE (Food + Residential) | Aggregate Level of Concern (LOC) | Surface Water EEC (ppb) | Ground Water EEC (ppb) | Intermediate-Term DWLOC (ppb) |
|---|---|---|---|---|---|
| All infants (<1 year) | 650 | 100 | 0.4 | 0.006 | 3,000 |
| Children 1–2 years | 576 | 100 | 0.4 | 0.006 | 2,900 |
| Children 3–5 years | 613 | 100 | 0.4 | 0.006 | 2,900 |

These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food and residential uses. For surface and ground water, the EECs for pyriproxyfen are significantly less than the DWLOCs as a contribution to intermediate-term and short-term aggregate exposure. Therefore, EPA concludes with reasonable certainty that residues of pyriproxyfen in drinking water do not contribute significantly to the intermediate-term or short-term aggregate human health risk at the present time.

Pyriproxyfen is classified as not likely to be a human carcinogen, so the Agency did not conduct a cancer aggregate risk assessment.

Based upon these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children, from aggregate exposure to pyriproxyfen residues.

## V. Other Considerations

### *A. Analytical Enforcement Methodology*

Adequate enforcement methodology (gas liquid chromotography with nitrogen-phosphorus (GLC/NP) detector) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

### *B. International Residue Limits*

There are no Codex, Canadian, or Mexican maximum residue limits for residues of pyriproxyfen in/on celery, so international harmonization is not an issue.

### *C. Conditions*

A maximum of three applications may be made, at a maximum rate of 0.067 lbs active ingredient (a.i.) per acre per season, using ground or air application equipment. Do not exceed 0.20 lbs a.i. per acre per year. A 14 day pre-harvest interval must be observed.

## VI. Conclusion

Therefore, the tolerance is established for residues of pyriproxyfen, 2-[1-methyl-2(4-phenoxyphenoxy) ethoxypyridine, in or on celery at 2.50 ppm.

## VII. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of the FFDCA, as was provided in the old sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

### *A. What Do I Need to Do to File an Objection or Request a Hearing?*

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2004–0028 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before May 10, 2004.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm.104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by the docket ID number OPP–2004–0028, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

**VIII. Statutory and Executive Order Reviews**

This final rule establishes a time-limited tolerance under section 408 of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 exemption under section 408 of the FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers, and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

**IX. Congressional Review Act**

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

**List of Subjects in 40 CFR Part 180**

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 24, 2004.

**Lois Rossi,**

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

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

**PART 180—[AMENDED]**

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

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

■ 2. Section 180.510 is amended by alphabetically adding "celery" to the table in paragraph (b) to read as follows:

**§ 180.510 Pyriproxyfen; tolerances for residues.**

* * * * *

(b) * * *

| Commodity | Parts per million | Expiration/revocation date |
|---|---|---|
| * * * | * | * |
| Celery | 2.50 | 6/30/07 |
| * * * | * | * |

* * * * *

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 271

**[FRL–7634–3]**

## Idaho: Final Authorization of State Hazardous Waste Management Program Revision

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

**ACTION:** Final rule.

**SUMMARY:** Idaho applied to the United States Environmental Protection Agency (EPA) for final authorization of changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). On August 1, 2003, EPA published a proposed rule to authorize the changes and opened a public comment period. The comment period closed on September 15, 2003. Today, EPA has decided that these revisions to the Idaho hazardous waste management program satisfy all of the requirements necessary to qualify for final authorization and is authorizing these revisions to Idaho's authorized hazardous waste management program in today's final rule.

**EFFECTIVE DATE:** Final authorization for the revisions to the hazardous waste program in Idaho shall be effective at 1 p.m. e.s.t. on March 10, 2004.

**FOR FURTHER INFORMATION CONTACT:** Jeff Hunt, WCM–122, U.S. EPA Region 10, Office of Waste and Chemicals Management, 1200 Sixth Avenue, Mail Stop WCM–122, Seattle, Washington, 98101, phone (206) 553–0256.

**SUPPLEMENTARY INFORMATION:**

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

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to and consistent with the Federal program. States are required to have enforcement authority which is adequate to enforce compliance with the requirements of the hazardous waste program. Under RCRA section 3009, States are not allowed to impose any requirements which are less stringent than the Federal program. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in title 40 of the Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

Idaho's hazardous waste management program received final authorization effective on April 9, 1990 (55 FR 11015, March 29, 1990). EPA also granted authorization for revisions to Idaho's program effective on June 5, 1992 (57 FR 11580, April 6, 1992), on August 10, 1992 (57 FR 24757, June 11, 1992), on June 11, 1995 (60 FR 18549, April 12, 1995), on January 19, 1999 (63 FR 56086, October 21, 1998), and most recently on July 1, 2002 (67 FR 44069, July 1, 2002).

Today's final rule addresses a program revision application that Idaho submitted to EPA on June 6, 2003, in accordance with 40 CFR 271.21, seeking authorization of changes to the State program. On August 1, 2003, EPA published a proposed rule announcing its intent to grant Idaho final authorization for revisions to Idaho's hazardous waste program and provided a period of time for the receipt of public comments. The proposed rule can be found at 68 FR 45192.

### B. What Were the Comments to EPA's Proposed Rule?

EPA received one adverse comment letter during the comment period on the proposed rule. The comment letter was submitted by the Environmental Defense Institute, Keep Yellowstone Nuclear Free and David B. McCoy, collectively the commentors. EPA has taken into consideration the comments relating to the authorization of revisions to the Idaho hazardous waste management program in taking today's action. The issues raised by the commentors for purposes of this revision authorization and EPA's responses follow below.

The commentors raised issues in the following areas: (1) The commentors asserted that EPA is obligated to delay issuing a final rule for authorization of these revisions to the Idaho hazardous waste management program until completion of an EPA Office of Inspector General (IG) investigation based on a petition submitted to the Office of Inspector General on August 8, 2000; (2) the commentors asserted that Idaho's intent to move forward with the closure plan for two high level radioactive waste (HLW) and mixed waste tanks at the Idaho National Engineering and Environmental Laboratory (INEEL) violates the recent U.S. District Court ruling in *Natural Resources Defense Council, et al.* v. *Spencer Abraham (NRDC* v. *Abraham)*, Case No. 01–CV–413 (July 3, 2003) and requires EPA intervention to ensure enforcement of the applicable law, in particular with respect to RCRA "mixed waste;" (3) the commentors asserted that the Tank Farm Facility (TFF) "closure plan is in violation of RCRA since the DOE/ID has no INEEL RCRA Part B Permit;" and (4) the commentors asserted that the Waste Calcine Facility (WCF) at the INEEL was improperly closed under RCRA because the facility closed with RCRA mixed waste and HLW in place. While these comments focused on a single facility in Idaho and the decisions made by DEQ regarding that facility, the commentors, both in the comment letter and in the numerous attachments thereto, implied that DEQ's actions at this facility had program-wide implications.

In preparing its response to these comments, EPA reviewed, among other documents, the comments and their attachments, the available files on the particular permits and units, including the WCF and the TFF, and the recent ruling in *NRDC* v. *Abraham*, as well as the joint amicus brief submitted by the States of Idaho, Washington, Oregon and South Carolina, and the Memorandum of Points and Authorities filed on March 6, 2003 by the United States Department of Justice on behalf of the Department of Energy. The administrative record compiled for this final rule can be located by contacting the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this rule.

With respect to the first comment on the proposed rule, EPA does not agree that it is obligated to delay this action until completion of an IG investigation.[1] The revisions to authorized hazardous waste programs are addressed in the regulations at 40 CFR 271.21. Program revisions are approved or disapproved by the Administrator based on the requirements of 40 CFR part 271 and the Resource Conservation and Recovery Act, as amended, (Act). *See* 40 CFR 271.21(b)(2). The Administrator has the discretion, among other things, to decline to approve a program revision as well as to withdraw approval of an authorized state program for cause. For purposes of today's action, EPA has determined, based on the administrative

[1] Nor did the IG reach such a conclusion in the Final Evaluation Report "Review of EPA's Response to Petition Seeking Withdrawal of Authorization for Idaho's Hazardous Waste Program," Report No. 2004–P–00006, February 5, 2004. The IG did conclude that "Region 10 generally relied on appropriate regulatory requirements and standards in reaching its conclusion that evidence did not exist to commence proceedings to withdraw the State of Idaho's authority to run its RCRA Hazardous Waste program."

record, that authorizing these revisions to Idaho's hazardous waste management program meets the requirements for authorization and continues to ensure that the authorized program in Idaho can meet the requirements for permitting, enforcement, and environmental protection at the INEEL facility and throughout the State of Idaho. The revisions in today's final rule include the rules in Idaho that add all delegable federal hazardous waste rules promulgated between July 1, 1998, and July 1, 2001 (with the exception of parts of the post closure rule), to the already existing hazardous waste program.

EPA does not agree with the second assertion made by the commentors. The commentors asserted that Idaho's intent to move forward with the closure plan for HLW tanks at the INEEL violated the recent U.S. District Court ruling in *NRDC* v. *Abraham,* Case No. 01–CV–413 (July 3, 2003), and requires EPA intervention to ensure enforcement of the applicable law, in particular with respect to RCRA "mixed waste." The tanks which are of issue are tanks WM–182 and WM–183 located within the TFF at the INEEL. The tanks are subject to RCRA and the Department of Energy's (DOE) authority under the Atomic Energy Act (AEA), as DOE maintains, or to the Nuclear Waste Policy Act (NWPA), as the District Court concluded. The U.S. Department of Justice, on behalf of DOE, has appealed the *NRDC* v. *Abraham* decision to the Ninth Circuit Court of Appeals.

The commentors failed to distinguish the RCRA "mixed waste" authority and its application to the tanks from those radioactive solid waste issues which may be the subject of the NWPA or the AEA. The State of Idaho joined the States of Oregon, South Carolina and Washington in an amicus brief to the Court to discuss the complex issues involved in the case of *NRDC* v. *Abraham.* The joint brief argued from the States' perspective that the DOE had to apply the definition of HLW under the NWPA to determine whether radioactive solid waste met the definition of HLW. The ruling, which the United States appealed, held that DOE did not have discretion to dispose of HLW in other than the type of repository required by the NWPA and that a DOE order, which set a DOE policy to make decisions on how to classify radiological waste, conflicted with the NWPA and was invalid.

The Idaho Department of Environmental Quality (IDEQ) explained to the commentors by letter dated July 29, 2003, that the ruling might have implications for how DOE addresses the HLW in the tanks:

Judge Winmill's decision did not issue any form of injunctive relief but advised instead that DOE should not take actions inconsistent with the decision. It may be possible for DOE to proceed with its planned RCRA closure at Tanks WM–182 and WM–183 without violating any part of Judge Winmill's order (*e.g.* if no HLW as defined by the NWPA is contained in the tanks). If on the other-hand, it is apparent that DOE will be unable to complete a portion of the RCRA closure plan due to the legal constraints of the NWPA, the Department will ask DOE to submit an amendment to the plan that provides for complete RCRA closure, while meeting other appropriate legal requirements. In the interim, nothing in Judge Winmill's decision prevents DOE from moving forward with the emptying and cleaning of other tanks and other closure activities.

It is clear that Idaho understands the difference between the state's authority over RCRA "mixed waste," the hazardous waste component of which is addressed by the RCRA-authorized hazardous waste program in Idaho, and "HLW," the radiological component of which may be subject to the AEA, as DOE maintains, or to the NWPA, as the District Court concluded. Idaho is carrying out its responsibilities under the authorized hazardous waste program for "mixed waste." EPA's direct intervention in this matter, which the commentors request, is not called for at this time.

The commentors' third assertion was that the closure of two HLW tanks at INEEL is in violation of RCRA since the DOE/ID has no INEEL RCRA Part B Permit. EPA does not agree that the closure of the first two of eleven Tank Farm Facility (TFF) tanks without a permit violates RCRA. Interim status units are allowed to close pursuant to a closure plan approved in accordance with the Federal regulations at 40 CFR part 265 subpart G, incorporated by reference and authorized in the Idaho hazardous waste program at IDAPA 58.01.05.009.

The commentors' final assertion was that the WCF at the INEEL facility improperly closed under RCRA because the facility closed with RCRA mixed waste and HLW in place rendering the facility a "permanent disposal site" for high-level radioactive waste and mixed hazardous transuranic waste. The WCF was closed in accordance with a closure plan approved by IDEQ pursuant to 40 CFR part 265 subpart G. The WCF closure plan called for capping the WCF with a concrete cap. A draft partial post-closure permit for the WCF was provided to the public for review and comment on May 23, 2003, and a final partial post-closure permit was issued for WCF and became effective on October 16, 2003. The concrete cap was a component of the post-closure permit. The commentors' allegation relates to the policy challenged in *NRDC* v. *Abraham.* The resolution of this issue does not reside in the RCRA statute or regulations and cannot be resolved in this authorization. Regardless of the ultimate resolution of the DOE policy challenged in *NRDC* v. *Abraham,* the comment on the WCF is insufficient as a basis upon which to decide the merits of authorizing this revision to the Idaho program. The revision and the program as a whole meet the requirements for authorization.

### C. What Decisions Have We Made in This Rule?

EPA has made a final determination that Idaho's revisions to the Idaho authorized hazardous waste program meet all of the statutory and regulatory requirements established by RCRA for authorization. Therefore, EPA is authorizing the revisions to the Idaho hazardous waste program and authorizing the State of Idaho to operate its hazardous waste program as described in the revision authorization application. Idaho's authorized program will be responsible for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of RCRA, including the Hazardous and Solid Waste Amendments of 1984 (HSWA).

New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA are implemented by EPA and take effect in States with authorized programs before such programs are authorized for the requirements. Thus, EPA will implement those HSWA requirements and prohibitions in Idaho, including issuing permits or portions of permits, until the State is authorized to do so.

### D. What Will Be the Effect of Today's Action?

The effect of today's action is that a facility in Idaho subject to RCRA must comply with the authorized State program requirements and with any applicable Federally-issued requirement, such as, for example, the federal HSWA provisions for which the State is not authorized, and RCRA requirements that are not supplanted by authorized State-issued requirements, in order to comply with RCRA. Idaho has enforcement responsibilities under its State hazardous waste program for violations of its currently authorized program and will have enforcement responsibilities for the revisions which are the subject of this final rule. EPA continues to have independent

enforcement authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Conduct inspections; require monitoring, tests, analyses or reports;
- Enforce RCRA requirements, including State program requirements that are authorized by EPA and any applicable federally-issued statutes and regulations; suspend, modify or revoke permits; and
- Take enforcement actions regardless of whether the State has taken its own actions.

This final action approving these revisions will not impose additional requirements on the regulated community because the regulations for which Idaho's program is being authorized are already effective under State law.

**E. What Rules Are We Authorizing With Today's Action?**

On June 6, 2003, Idaho submitted a complete program revision application, seeking authorization for all delegable Federal hazardous waste regulations codified as of July 1, 2001, as incorporated by reference in IDAPA 58.01.05.(002)–(016) and 58.01.05.997, except specific portions of the post closure rule noted in the paragraphs below.[2] EPA has determined that the revisions to Idaho's hazardous waste program satisfy all of the requirements necessary for final authorization, and EPA is authorizing the state's changes.

In this final rule, Idaho is receiving partial authorization for the Post Closure Rule promulgated on October 22, 1998 (63 FR 56710). Idaho is not receiving authorization for 40 CFR 270.1(c)(7), Enforceable documents for post-closure care; 40 CFR 265.121, Post-closure requirements for facilities that obtain enforceable documents in lieu of post-closure permits; 40 CFR 265.110(c), and 40 CFR 265.118(c)(4). These provisions are described in the Post Closure rule preamble at 63 FR 56712 section a., Post-closure care under alternatives to permits.

Idaho is not receiving authorization for the clause "* * * or in an enforceable document (as defined in 270.1(c)(7))" in the following sections which are incorporated by reference into Idaho's hazardous waste program: 40 CFR 264.90(e), 264.90(f), 264.110(c), 264.112(b)(8), 264.112(c)(2)(iv), 264.118(b)(4), 264.118(d)(2)(iv), 264.140(d), 265.90(f), 265.110(d), 265.112(b)(8), 265.118(c)(5), 265.140(d), 270.1(c) introduction, and 270.28.

**F. Who Handles Permits After This Authorization Takes Effect?**

Idaho will issue permits for all the provisions for which it is authorized and will administer the permits it issues. All permits or portions of permits issued by EPA prior to final authorization of this revision will continue to be administered by EPA until the effective date of the issuance, re-issuance after modification, or denial of a State RCRA permit or until the permit otherwise expires or is revoked, and until EPA takes action on its permit or portion of permit. HSWA provisions for which the State is not authorized will continue in effect under the EPA-issued permit or portion of permit. EPA will continue to issue permits or portions of permits for HSWA requirements for which Idaho is not yet authorized.

**G. What Is Codification and Is EPA Codifying Idaho's Hazardous Waste Program as Authorized in This Rule?**

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. EPA does this by referencing the authorized State's authorized rules in 40 CFR part 272. EPA is reserving the amendment of 40 CFR part 272, subpart F for codification of Idaho's program at a later date.

**H. How Does Today's Action Affect Indian Country (18 U.S.C. Section 1151) in Idaho?**

EPA's decision to authorize the Idaho hazardous waste program does not include any land that is, or becomes after the date of this authorization, "Indian Country," as defined in 18 U.S.C. 1151. This includes: (1) All lands within the exterior boundaries of Indian reservations within or abutting the State of Idaho; (2) any land held in trust by the U.S. for an Indian tribe; and (3) any other land, whether on or off an Indian reservation that qualifies as Indian country. Therefore, this action has no effect on Indian country. EPA retains jurisdiction over "Indian Country" as defined in 18 U.S.C. 1151.

**I. Statutory and Executive Order Reviews**

*1. Executive Order 12866*

Under Executive Order 12866 (58 FR 51735, October 4,1993), the Agency must determine whether the regulatory action is "significant", and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. It has been determined that this final rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

*2. Paperwork Reduction Act*

The Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, is intended to minimize the reporting and record-keeping burden on the regulated community, as well as to minimize the cost of Federal information collection and dissemination. In general, the Act requires that information requests and record-keeping requirements affecting ten or more non-Federal respondents be approved by OPM. Since this final rule does not establish or modify any information or record-keeping requirements for the regulated community, it is not subject to the provisions of the Paperwork Reduction Act.

*3. Regulatory Flexibility*

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), 5 U.S.C. 601 *et seq.*, generally requires federal agencies to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business, as codified in the Small Business Size Regulations at 13 CFR

[2] Sections of the Federal hazardous waste program are not delegable to the states. These sections are 40 CFR part 262, subparts E, F, & H; 40 CFR 268.5; 40 CFR 268.42(b); 40 CFR 268.44(a)–(g); and 40 CFR 268.6. Authority for implementing the provisions contained in these sections remains with EPA.

part 121; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. EPA has determined that this action will not have a significant impact on small entities because the final rule will only have the effect of authorizing pre-existing requirements under State law. After considering the economic impacts of today's proposed rule, I certify that this action will not have a significant economic impact on a substantial number of small entities.

*4. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act (UMRA) of 1995 (Pub. L. 104–4) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any year. Before promulgating an EPA rule for which a written statement is needed, Section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why the alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local or tribal governments or the private sector. It imposes no new enforceable duty on any State, local or tribal governments or the private sector. Similarly, EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small government entities. Thus, the requirements of section 203 of the UMRA do not apply to this rule.

*5. Executive Order 13132: Federalism*

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government."

This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government, as specified in Executive Order 13132. This rule addresses the authorization of pre-existing State rules. Thus, Executive Order 13132 does not apply to this rule.

*6. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175, entitled "Consultation and Coordination With Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This rule does not have tribal implications, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

*7. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

Executive Order 13045 applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866 and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

*8. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a "significant regulatory action" as defined under Executive Order 12866.

*9. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 104–113, 12(d) (15 U.S.C. 272) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through the OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rule does not involve "technical standards" as defined by the NTTAA. Therefore, EPA is not considering the use of any voluntary consensus standards.

*10. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low Income Populations*

To the greatest extent practicable and permitted by law, and consistent with the principles set forth in the report on the National Performance Review, each Federal agency must make achieving environmental justice part of its mission by identifying and addressing, as

appropriate, disproportionately high and adverse human health and environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States and its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Mariana Islands. Because this rule addresses authorizing pre-existing State rules and there are no anticipated significant adverse human health or environmental effects, the rule is not subject to Executive Order 12898.

*11. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of 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). This rule will be effective on the date the rule is published in the **Federal Register**.

**List of Subjects in 40 CFR Part 271**

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

**Authority:** This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: March 3, 2004.

**L. John Iani,**

*Regional Administrator, Region 10.*

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## FEDERAL COMMUNICATIONS COMMISSION

**47 CFR Part 54**

**[CC Docket No. 96–45, DA 03–4070]**

## Federal-State Joint Board on Universal Service

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Wireline Competition Bureau (Bureau) updates line counts and other input data used in the Commission's forward-looking economic cost model for purposes of calculating and targeting non-rural high-cost support beginning January 1, 2004. The Bureau denies a petition filed by the Maine Public Utilities Commission and the Vermont Public Service Board (Joint Commenters) seeking reconsideration of the Bureau's 2002 *Line Counts Update Order*.

**ADDRESSES:** The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Thomas Buckley, Attorney, Telecommunications Access Policy Division, Wireline Competition Bureau, (202) 418–7400, TTY (202) 418–0484.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Bureau's Order and Order on Reconsideration in CC Docket No. 96–45, DA 03–4070 released December 24, 2003.

### I. Introduction

1. The Bureau, consistent with action taken in the past, updates line counts and other input data used in the Commission's forward-looking economic cost model for purposes of calculating and targeting non-rural high-cost support beginning January 1, 2004. In the Order on Reconsideration, the Bureau denies a petition filed by the Maine Public Utilities Commission and the Vermont Public Service Board (Joint Commenters) seeking reconsideration of the Bureau's *2002 Line Counts Update Order*, 67 FR 3118, January 23, 2002.

### II. Discussion

*A. Switched Line Count Updates*

2. Consistent with the framework adopted in the *Twentieth Reconsideration Order*, 65 FR 26513, May 8, 2000, and the *2001 and 2002 Line Counts Update Orders*, 65 FR 81759, December 27, 2000 and 67 FR 3118, January 23, 2002, we conclude that the cost model should use year-end 2002 line counts filed July 31, 2003, as input values for purposes of estimating average forward-looking costs and determining support for non-rural carriers beginning January 1, 2004. We will adjust support amounts every quarter to reflect the lines reported by non-rural carriers. In addition, we will allocate switched lines to the classes of service used in the model by dividing year-end 2002 lines into business lines, residential lines, payphone lines, and single-line business lines for each wire center in the same proportion as the lines filed pursuant to the *1999 Data Request*.

3. We disagree with BellSouth that line counts should not be updated unless the Bureau also updates road and customer location data. Updated line count data are readily available, whereas updated road and customer location data are not. As we have explained in the past, line count data must be updated to reflect cost changes and economies of scale associated with changes in line counts, consistent with the Commission's forward-looking cost criteria established in the *First Report and Order*, 67 FR 41862, June 20, 1997. Line count data also should be updated to avoid increasing the lag between such data and the quarterly line count data used to adjust non-rural high-cost support amounts. We are not persuaded that updating line counts is inappropriate because it may fail to reflect certain costs associated with serving new customer locations. The model's use of road surrogate data to determine customer locations ensures that the structure costs associated with serving new customer locations are reflected in model cost estimates unless such locations are along new roads. BellSouth contends that recent switched line decreases and new housing growth in its service territory undermine the assumption that most new lines are either placed at existing customer locations or along existing cable routes, but it submits no data in support of this contention. Switched lines nationwide decreased by 3.3 percent in 2002, and Commission data indicate that households increased by approximately one percent. Based on these data, we cannot conclude that the trends identified by BellSouth justify not updating line count data. On balance, we find that updating line count data is the best approach for estimating forward-looking costs and determining non-rural high-cost support amounts for 2004.

4. We also disagree with AT&T's argument that we should use projected

lines for the end of the 2004 funding year, rather than the most recent reported year-end lines (end of 2002), to match the line count data used to estimate forward-looking costs with the quarterly line count data used to adjust non-rural high-cost support amounts. AT&T has not proposed a methodology for projecting lines. Verizon argues that any such methodology would be complex, difficult, and overly burdensome for purposes of estimating forward-looking costs. We also note that, as stated above, switched lines have declined recently, suggesting the difficulty of accurately projecting lines based on historical data. Consistent with the *2001 and 2002 Line Counts Orders*, we find that year-end 2002 line counts are the appropriate data to use for updating the cost model's input values at this time.

*B. Special Access Line Count Updates*

5. Consistent with the *2002 and 2001 Line Counts Update Orders*, we will use year 2002 ARMIS special access line count data as model inputs to estimate forward-looking costs and determine non-rural high-cost support amounts in 2004. On balance, we conclude that this approach is consistent with the Commission's criteria for estimating forward-looking costs and with applicable universal service principles. We also will continue to divide the updated special access lines among wire centers in the same proportion as the special lines from the *1999 Data Request*. As discussed below, we conclude that this methodology is a reasonable approach for estimating special access line growth to determine non-rural high-cost support amounts in 2004.

6. Based on our examination of the record, we continue to find that it is appropriate to update special access lines for purposes of determining non-rural high-cost support in 2004. The *First Report and Order* requires that the model reflect the economies of scale of serving all business and residential lines, including special access lines. Consistent with this criterion, the Bureau always has included special access line count data within its cost estimates. Removing special access line count data from the model's cost calculations would ignore the demand for special access services. We find that removing special access lines would be inconsistent with the Commission's criteria requiring that the model reflect the economies of scale of serving all business and residential lines, including special access lines.

7. We also conclude that updating special access line count data for purposes of determining non-rural high-cost support in 2004 is consistent with the principle set forth in section 254(b)(5) of the Act that the universal service support mechanism should be specific and predictable. Because different states have different percentages of special access lines, removing them has differential effects on costs and, therefore, support among states. We decline to adopt an interim approach to estimating costs that would significantly change support in some states outside the context of a Commission proceeding to address the underlying model design issues raised by commenters. We conclude that it would be more appropriate to maintain continuity of support until these issues can be addressed comprehensively in a future Commission proceeding.

8. The current record is insufficient to permit us to reach a conclusion as to what adjustments may be needed, if any, to the model's process for counting high-capacity special access lines. Although some commenters argue that the model understates costs by counting high-capacity lines as voice-grade equivalents, it may overstate costs by deploying high-capacity lines on copper instead of fiber. Some commenters also argue that the model overstates costs because it does not include inputs for non-switched services such as digital subscriber lines. In other words, to the extent that adjustments to the model may be needed, such adjustments may increase some costs and reduce others. Consequently, we believe that the most prudent approach is to wait for further action by the Commission to consider several model improvements, specifically including the process for estimating special access demand. In the meantime, we conclude that updating special access line count data for purposes of determining non-rural high-cost support in 2004 is consistent with the Commission's forward-looking cost criteria and with applicable universal service principles.

9. We reject BellSouth's contention that special access line count data should be removed from the model's cost calculations for purposes of determining non-rural high-cost support based on the Bureau's decision to remove special access demand to set unbundled network element (UNE) prices in the Virginia arbitration proceeding. Different rules and principles apply in this proceeding that warrant a different approach. In that proceeding, the Bureau was faced with two proposals for accounting for special access lines and their associated costs in setting Verizon Virginia, Inc.'s UNE rates. Under total element long range incremental cost (TELRIC) principles, the Bureau had to choose the methodology which would result in UNE rates within a range of reasonableness. Here, in contrast, we must determine how to treat special access lines for purposes of calculating non-rural high-cost support. Whereas the Bureau's decision in the Virginia arbitration proceeding affected UNE rates in one state, non-rural high-cost support is determined based on the relationship between each state's average cost per line and the nationwide average. Because different states have different percentages of special access lines, removing special access lines from the model's cost calculations may significantly change support in some states. Our decision here is guided in part by the section 254(b)(5) principle that universal service support should be specific and predictable. Under the circumstances, we conclude that a different approach is warranted for the purpose of determining non-rural high-cost support.

10. We also reject Verizon's request that we publish model cost estimates with and without special access demand at the study-area level before deciding this issue. Verizon argues that it cannot determine whether zeroing out special access lines would produce reasonable results because the Commission has not provided adequate data to allow interested parties to "run the latest version of the model to remove special access demand." Contrary to Verizon's claim, the Commission provides all the necessary tools and data to run the model without special access lines. Specifically, both the model and ARMIS special access line data are made available to the public on the Commission's Web site. Further, switched line count data are available to the public under a protective order.

11. We also will continue to divide the updated special access lines among wire centers in the same proportion as the special access lines from the *1999 Data Request*. We conclude that allocating year 2002 ARMIS special access lines based on the *1999 Data Request* remains a reasonable approach for estimating special access line growth for purposes of calculating and targeting non-rural high-cost support for 2004. In this regard, we have analyzed the Verizon data submitted by the Joint Commenters. Based on our analysis, we are not persuaded that the Bureau's allocation methodology is unreliable or produces biased results.

12. The Joint Commenters submitted an analysis comparing model cost estimates based on (1) Verizon data reflecting the number of high-capacity

special access lines in each Maine and Vermont wire center served by Verizon at the end of 2001 and (2) year 2000 ARMIS data allocated to wire centers using the Bureau's methodology. They contend that their analysis demonstrates that the Bureau's allocation methodology produces "significant errors" (defined as line count data requiring a correction of 25 percent or more) for 78 percent of the wire centers. They further contend that this methodology overestimates special access lines within 83 percent of wire centers with less than 3,000 switched lines, and underestimates special access lines in 67 percent of wire centers with more than 10,000 switched access lines. As a result, they claim that the data used by the Bureau to allocate special access lines are "unreliable for both urban and rural areas." The Joint Commenters also calculated an "average cost correction" for wire centers in five size groups (based on switched access lines). They contend that the correction factors vary according to wire center size, and that their application to 2002 support amounts increases support by $0.49 per line for Maine and by $0.50 per line for Vermont. They argue that the Bureau should use special access line count data used to estimate costs for the 2000 funding year, or provide non-rural carriers with the greater of the amount calculated with updated data or the amount provided in 2000.

13. As an initial matter, we disagree with the premise of the Joint Commenters' analysis that the goal of the allocation methodology is to achieve an exact correspondence between the lines assigned to a given wire center in the model and the actual number of lines served. Rather, the goal is to achieve reasonable results that are consistent with the Commission's forward-looking cost criteria using the best available data. For example, the *1999 Data Request* required carriers to report intrastate "private lines" with special access lines, pursuant to the criterion that the model estimate the cost of serving all businesses and households, including the cost of special access and private lines. The Commission has never used the number of private lines as model inputs, however, because nationwide private line data had not been available until this year. The Bureau's methodology assigns updated ARMIS special access lines to a wire center based on the proportion of special access and private lines reported for that wire center in the *1999 Data Request*. Thus, we would expect differences between the number of lines the allocation methodology assigns to a given wire center in the model and the number of special access lines a carrier serves in that wire center.

14. In addition, because it compares model lines and Verizon lines from two different time periods, the analysis is not the "apples-to-apples" comparison that the Joint Commenters set out to achieve. The Joint Commenters compared model lines based on year 2000 ARMIS special access line count data with year 2001 special access lines obtained from Verizon. Furthermore, the analysis focuses on the number of special access lines assigned to wire centers, rather than the percentages of lines in a study area that are assigned to wire centers. Even if the Joint Commenters had compared model and Verizon data from the same year, as explained above, we would not expect the number of special access lines assigned to a wire center to be the same. The Bureau's methodology assigns special access lines to wire centers using fractions calculated based on the *1999 Data Request*. Thus, a more appropriate comparison for evaluating the Bureau's methodology would be to compare the percentage of special access lines in a study area that are assigned to a wire center using the Bureau's methodology with the percentage of total special access lines in the study area that are identified in the Verizon data as serving that wire center.

15. After analyzing the two data sets on which the Joint Commenters base their analysis, we cannot conclude that the Bureau's allocation methodology produces unreliable or biased results. We first analyzed the data sets for differences between the percentages of total special access lines assigned to individual wire centers, using the Joint Commenters' wire center size categories. We found that for the 45 wire centers with less than 3,000 lines, the Bureau's methodology assigns a higher percentage of lines than Verizon's special access lines in most cases (consistent with the Joint Commenters' contention), but the average difference between the model percentages and the Verizon percentages is very small—only −0.1 percent. For the 24 wire centers with over 10,000 switched lines, we found that the Bureau's methodology assigns a lower percentage of lines than the Verizon data in only 33 percent of the wire centers. Contrary to the Joint Commenters' findings, the Bureau's methodology assigns a higher percentage of lines than the Verizon data in most wire centers from this group. We also analyzed the correlation between wire center size and percentage differences between model lines and Verizon lines. Although we found an overall correlation of +0.541, this correlation is caused mainly by two outlier data points. Thus, although our analysis reveals differences between model lines and Verizon's special access lines that are on average negative in small wire centers and positive in large wire centers, the differences are very small—less than 1 percent—and do not reveal a pattern that supports the Joint Commenters" allegation of substantial systematic bias.

16. Furthermore, our analysis of the Joint Commenters' cost results does not show a consistent pattern in the data that would support their allegation of bias. Again, for purposes of our analysis, we used the Joint Commenters' wire center size categories. As stated above, they contend that the differences in model cost estimates based on Verizon lines and model lines correlate to wire center size: higher-density (urban) wire centers have lower costs and lower-density (rural) wire centers have higher costs based on Verizon lines. Although this is true, on average, most of the wire centers within their groups do not conform to this pattern. For small wire centers with 0 to 1,000 lines, the Joint Commenters found that the average difference was +$0.11. Twenty-eight of the 34 wire centers in this group have lower costs using Verizon data, however. For wire centers with 1,000 to 2,500 lines, the Joint Commenters found that the average difference was +$0.23, but 57 out of the 77 wire centers in this group have lower costs using Verizon data. Thus, the majority of small, rural wire centers show differences that are counter to the Joint Commenters' allegation of bias.

17. We also analyzed the cost results when the Verizon data are adjusted to match the vintage of the other line count data used in the Joint Commenters' analysis. As discussed above, they compared two vintages of special access lines: year 2000 ARMIS line count data and 2001 line count data obtained from Verizon. To obtain cost results, they used these data in combination with year-end 2000 switched line counts. The Bureau runs the model using switched and special access lines from the same year, however, which is important for purposes of analyzing cost results because it allows one to distinguish between effects due to changes in the overall number of lines and changes due to the allocation of lines. Accordingly, Bureau staff factored down the Verizon year 2001 special access data to reflect the total year 2000 ARMIS special access line data, and combined this data with year-end 2000 switched line count data to obtain adjusted cost results.

Comparing these adjusted results to results based on model lines, we again found that although the average differences were consistent with the Joint Commenters' findings, most wire centers showed differences counter to the allegation of bias. As shown in Attachment B, the overall result of our analysis of the relationship between wire center size and differences in cost results based on adjusted Verizon lines and model lines was a slight statistical correlation of −0.085 percent. Given the slight correlation between costs and size in the two states and the various directions of cost corrections for wire centers within each group, we cannot conclude that the Joint Commenters' cost correction factors are reliable. In sum, therefore, we conclude that allocating year 2002 ARMIS special access lines based on the *1999 Data Request* remains a reasonable approach for estimating special access line growth for purposes of calculating and targeting non-rural high-cost support for 2004, and that the Joint Commenters' analysis does not establish that this methodology is unreliable or produces biased results.

18. Finally, the Joint Commenters do not establish an alternative methodology that would provide fairer or more reasonable results. Even if their cost correction factors were reliable for Maine and Vermont, there is no reason to believe the same factors would be reliable nationwide. The differences in costs based on special access lines and costs based on model lines are likely to differ significantly by state given the diversity of terrain, population density, and size. Because support is determined in relationship to the nationwide average cost, we would have concerns about applying cost correction factors derived from two states to the nation as a whole. Moreover, if state-specific cost correction factors were used, it is not clear that the states of Maine and Vermont would see a "substantial" increase in support. Depending upon the "corrected" costs in other states, their support could also decrease.

19. In the absence of new data, the Joint Commenters urge the Commission to revert to the special access line counts used to distribute support in 2000, that is, year 1998 ARMIS special access lines. Using these line counts would provide demonstrably less reliable results than the current methodology for two reasons. Prior to ARMIS reporting year 2000, some carriers were under-reporting their special access lines by reporting special access circuits terminating at multiple customer premises as a single special access line, rather than as multiple special access lines. As part of its ongoing effort to improve data consistency, the Bureau subsequently clarified how special access lines should be reported in a consistent fashion. As a result, Verizon's special access lines increased substantially between year 1999 ARMIS reports and year 2000 ARMIS reports. Second, the method used to allocate special access lines to wire centers in the model's first year of operation was not as reliable as our current method. Because we had not yet developed a methodology to use the *1999 Data Request* to allocate lines to wire centers, we used the only data available at the time to allocate lines: the wire center line counts developed by PNR Associates, trued-up to year 1998 ARMIS line counts. The allocations in the *1999 Data Request* are more reliable because the data were filed by the carriers, rather than being estimated by PNR's National Access Line Model.

*C. Other Issues*

20. Consistent with the *2002 Line Counts Update Order*, we will update the model with year 2002 ARMIS data used to compute general support facilities (GSF) investment so that the model's cost estimates take into account the current costs of GSF investment associated with supported services. In addition, we will update the model with the most recent traffic parameters available from the National Exchange Carrier Association (NECA) to determine the percentage of the switch allocated to supported services and the switch port requirement for interoffice transport. We also will use the methodology employed in the *2001 and 2002 Line Counts Orders* to match wire centers reported by non-rural carriers in their quarterly line count data used to adjust non-rural high-cost support amounts with the wire centers found in the *1999 Data Request* and in the model's customer location data. Commenters generally support these input updates.

21. Some commenters express concerns regarding reporting of unbundled network element (UNE) lines that are sold or leased to competitive LECs for purposes of calculating and targeting non-rural high-cost support amounts. In particular, AT&T urges that leased lines and UNE lines must be reported to ensure that the model's cost estimates reflect the demand for total lines. The Maine and Vermont Commissions state that some non-rural carriers do not include UNE lines in their ARMIS reports, a practice which could reduce support amounts by exaggerating per-line costs in urban areas with substantial UNE-based competition relative to per-line costs in other areas. We clarify that the model uses lines reported to NECA pursuant to section 36.611 to estimate switched line demand, and that NECA requires that carriers report both leased lines and UNE lines that are sold to competitive LECs for purposes of § 36.611 reporting.

22. AT&T urges the Commission to initiate a proceeding to consider improvements to the model's platform and inputs, arguing that the model has "well-known deficiencies" and that recent developments confirm the inaccuracy of certain model platform and input assumptions. Such a proceeding is beyond the scope of the Bureau's delegated authority. The Commission has expressed its intention to initiate a proceeding to study proposed changes to the model inputs and model platform in a comprehensive manner.

## III. Petition for Reconsideration of the 2002 Line Counts Update Order

*A. Discussion*

23. We do not address Petitioners' arguments that the model input data used by the Bureau pursuant to the *2002 Line Counts Update Order* was unreliable, because these arguments are fully addressed in the foregoing Order. As demonstrated in the foregoing Order, there is no merit to Petitioners' contention that the Bureau's methodology for allocating updated special access lines in the model is unreliable or produces biased results. As also explained above, and contrary to Petitioners' assertion, it is appropriate to use data sources from different years in the model when these are the best available data to achieve reasonable results that are consistent with the Commission's forward-looking cost criteria and with applicable universal service principles. Below, we conclude that Petitioners' contention that the Bureau failed to provide adequate notice of its decision to update data in the *2002 Line Counts Update Order* is without merit.

24. Petitioners argue that the Bureau's *2002 Line Counts Public Notice*, 66 FR 48259, September 19, 2001, seeking comment on updating line counts for 2002 did not provide adequate notice that "routine updating of line counts would substantially reduce the support available for Verizon customers in their states." We disagree. The Bureau clearly stated in the *2002 Line Counts Update Public Notice* that it was considering updating line count data in the model using the same methodology as the Bureau used in the *2001 Line Counts Update Order*. In particular, for

purposes of determining support for the year 2002, the Bureau sought comment on updating the switched line counts in the model with year-end 2000 wire center line count data, updating special access line counts with year 2000 ARMIS data, and using the Bureau's *1999 Data Request* to allocate the updated lines. In the *2002 Line Counts Update Order*, the Bureau then applied these methodologies to estimate switched line and special access line count growth. Therefore, the Bureau provided adequate notice in the *2002 Line Counts Public Notice* of the method it used to update model inputs in the *2002 Line Counts Update Order*.

25. As the Bureau informed the public that it was considering the same framework for 2002 updates as it had in the past, we also disagree with Petitioners that they lacked adequate notice of the potential impact of input updates on 2002 support distributions. Consistent with the Commission's criterion that "[t]he cost study or model and all underlying data, formulae, computations, and software associated with the model must be available to all interested parties for review and comment," the model was posted on the Commission's website, and the input data used by the Bureau was available to the public either on the website or under a protective order or licensing agreement. Petitioners were therefore capable of determining the support distributions for 2002 based on the model's cost calculations before the *2002 Line Counts Update Order* was adopted. If Petitioners believed the support distributions were inappropriate, they had the burden of identifying why specific inputs should not have been updated, but Petitioners did not meet this burden. We therefore find that Petitioners had adequate notice of the potential impact on non-rural high-cost support amounts of the model input updates proposed in the *2002 Line Counts Public Notice*.

26. Petitioners further argue that the *2002 Line Counts Public Notice* failed to notify parties that the Bureau would count special access lines as voice grade equivalent channels in the model's inputs, special access lines would increase in various non-rural wire centers, and updated line counts would be matched with older data for purposes of assigning such lines to wire centers. We reject these claims for the following reasons. First, in the *2002 Line Counts Update Public Notice*, the Bureau stated it was considering updating special access lines as it had done in the past, which was to count special access lines as voice grade equivalent channels. In the comment cycle in that proceeding, Verizon requested that the Bureau count special access lines as facilities for purposes of calculating support for 2002. The Bureau, however, noted in the *2002 Line Counts Update Order* that such an alteration would require a platform change outside the scope of the proceeding, and deferred consideration of this issue until a future proceeding on possible improvements to the model platform and inputs. Similarly, because Petitioners were notified that special access lines would be updated using the same methodology as in the past, Petitioners could access year 2000 ARMIS special access filings for the non-rural carriers in their states on the Commission's website to find out whether special access lines increased or decreased for 2002 cost estimates. Consequently, we reject Petitioner's argument that the *2002 Line Counts Update Public Notice* failed to apprise interested parties of the methodology used to update special access lines in the *2002 Line Count Updates Order*. We find that the *2002 Line Counts Public Notice* was clear in seeking comment on whether to update the model's inputs consistent with past practice.

27. Petitioners also argue that the Bureau did not make available line count data at the time of release of the *2002 Line Counts Update Public Notice* due to proprietary treatment of these data. This claim is incorrect. In the *First Report and Order*, the Commission established, as one of the criteria in developing a forward-looking economic cost model to determine universal service support, that "all underlying data, formulae, computations, and software associated with the model should be available to all interested parties for review and comment." Consistent with this principle, the Commission has determined that line count data used for wire centers that receive high-cost support should be publicly available. In addition, line count data for wire centers that do not receive high-cost support are available pursuant to the Bureau's *Interim Protective Order*, April 7, 2000. Year-end 2000 line count data used to estimate high-cost support for 2002 was filed by non-rural carriers by July 31, 2001, and therefore was available to Petitioners at the time of the release of the *2002 Line Counts Public Notice* on September 11, 2001.

## IV. Ordering Clauses

28. Pursuant to the authority contained in sections 1–4, 201–205, 214, 218–220, 254, 303(r), 403, and 410 of the Communications Act of 1934, as amended, and § 1.108 of the Commission's rules, this order is adopted.

28a. Pursuant the authority contained in sections 4, 201–205, 218–220, 303(r), and 405 of the Communications Act of 1934, as amended, and 405 of the Communications Act of 1934, as amended, and §§ 1.106 and 1.429 of the Commission's rules, that the petition for reconsideration filed February 25, 2002, by the Maine Public Utilities Commission and Vermont Public Service Board is denied.

Federal Communications Commission.

**William Scher,**

*Assistant Chief, Wireline Competition Bureau Telecommunications Access Policy Division.*

[FR Doc. 04–5009 Filed 3–9–04; 8:45 am]

BILLING CODE 6712–01–P

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

### 49 CFR Part 193

**[Docket No. RSPA–03–14456; Amdt. 193–18]**

**RIN 2137–AD80**

## Pipeline Safety: Liquefied Natural Gas Facilities; Clarifying and Updating Safety Standards

**AGENCY:** Research and Special Programs Administration (RSPA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This final rule clarifies that the operation, maintenance, and fire protection requirements of the Research and Special Programs Administration's (RSPA) Office of Pipeline Safety's (OPS) regulations for liquefied natural gas (LNG) facilities apply to LNG facilities in existence or under construction as of March 31, 2000. An earlier final rule made the applicability of these requirements unclear. Additional changes to the regulations remove incorrect cross-references, clarify fire drill requirements, and require reviews of plans and procedures. Lastly, the final rule changes the regulations so that cross-references to the National Fire Protection Association standard, NFPA 59A, refer to the 2001 edition of that standard rather than the 1996 edition. These clarifications and changes will improve the clarity and effectiveness of the regulations.

**DATES:** This final rule takes effect April 9, 2004. However, LNG plants existing on March 31, 2000, need not comply with provisions of § 193.2801 on emergency shutdown systems, water

delivery systems, detection systems, and personnel qualification and training until September 12, 2005. Incorporation by reference of certain publications in this rule is approved by the Director of the Federal Register as of April 9, 2004.

**FOR FURTHER INFORMATION CONTACT:** L. M. Furrow by phone at 202–366–4559, by fax at 202–366–4566, by mail at U.S. Department of Transportation, 400 7th St., SW., Washington, DC 20590, or by e-mail at *buck.furrow@rspa.dot.gov*.

**SUPPLEMENTARY INFORMATION:**

## Background

On March 1, 2000, we published a final rule document amending the safety regulations in 49 CFR part 193, which apply to LNG facilities used in gas pipeline transportation (65 FR 10950). That document replaced many part 193 siting, design, construction, equipment, and fire protection requirements with references to a consensus standard, NFPA 59A, "Standard for the Production, Storage, and Handling of Liquefied Natural Gas (LNG)" (1996 edition). Until then, part 193 referenced NFPA 59A (1996 edition) in only a few instances concerning siting, design, and fire protection.

An amendment to § 193.2005, "Applicability," inadvertently implied that LNG facilities existing on March 31, 2000 (hereafter, "existing LNG facilities"), were exempt from part 193 operation, maintenance, and fire protection standards. After recognizing this ambiguity, we published a notice of proposed rulemaking (NPRM) to revise § 193.2005 (68 FR 23272; May 1, 2003). In the NPRM, we also proposed to revise incorrect cross-references that resulted from the March 1, 2000, final rule to establish minimum standards for fire drills used in fire protection training, and to require that operators review their part 193 plans and procedures at least once a year. We further proposed to update all part 193 references to NFPA 59A to the 2001 edition of that standard. Interested persons were invited to submit written comments on the proposed rules before July 1, 2003.

## Advisory Committee

The Technical Pipeline Safety Standards Committee (TPSSC) considered the NPRM and the associated evaluation of costs and benefits at a meeting in Washington, DC on May 30, 2003, and again in a teleconference held on July 31, 2003. TPSSC is a statutory advisory committee that advises RSPA/OPS on proposed safety standards and other policies for gas pipelines. It has an authorized membership of 15 persons, five each representing government, industry, and the public. Each member has qualifications to consider the technical feasibility, reasonableness, cost-effectiveness, and practicability of proposed pipeline safety standards. Transcripts of the meeting and teleconference are available in Docket No. RSPA–98–4470.

At the May 30 meeting, TPSSC voted unanimously to support our proposal to update references to NFPA 59A (2001 edition) for purposes of LNG facility siting, design, and construction. However, some members and audience participants were concerned that applying NFPA 59A (2001 edition) provisions on fire protection retroactively, as we proposed, would unnecessarily increase operating costs and conflict with current plant procedures. So TPSSC postponed discussion of updating the reference to NFPA 59A in the fire protection rule, § 193.2801. This fire protection issue and the proposed rules on fire drills and reviews of plans and procedures were discussed later at the teleconference. The next section of this preamble contains our treatment of TPSSC's advice on these matters.

## Disposition of Comments and TPSSC Advice on the Proposed Rules

This section of the preamble summarizes significant public comments and TPSSC advice we received on rules proposed in the NPRM. It also explains how we treated those comments and advice in developing the final rules. Subheadings correspond with new or amended rules proposed in the NPRM. We have not discussed all favorable comments or comments that suggested additional rulemaking actions. Changes proposed to §§ 193.2019(a), 193.2503, 193.2507, 193.2509(b), 193.2605(b)(2), and 193.2717(a) did not receive direct comment or TPSSC advice, so we adopted the proposed changes as final.

Nine entities submitted written comments: American Gas Association (AGA), Columbia Gas Transmission Corporation (Columbia), Distrigas of Massachusetts LLC (Distrigas), Duke Energy Gas Transmission (Duke), KeySpan Energy (KeySpan), Paiute Pipeline Company (Paiute), Peoples Gas Light and Coke Company (Peoples Gas), Sound Energy Solutions (Sound), and Williams Gas Pipeline (Williams). All comments are in the docket and available at *http://dms.dot.gov*. Most commenters favored the proposal to update references to the 2001 edition of NFPA 59A, but either opposed or offered alternatives to other proposals.

### *Section 193.2005 Applicability.*

As revised by the March 1, 2000, final rule, § 193.2005(a) reads as follows:

> Safety requirements mandating compliance with standard ANSI/NFPA 59A and other changes in this part governing siting, design, construction, equipment, fire protection, operation and maintenance apply to LNG facilities placed in service after March 31, 2000 unless otherwise noted.

This rule implies that the changes made to part 193 fire protection, operation, and maintenance requirements do not apply to existing LNG facilities. However, as explained in the NPRM, this implication was inadvertent and contrary to RSPA's/OPS's long-standing policy of applying part 193 operation, maintenance, and fire protection regulations retroactively. We proposed to remove the implication by amending § 193.2005(a) to read as follows:

> Standards in this part governing siting, design, installation, or construction of LNG facilities do not apply to LNG facilities existing or under construction before the date such standards take effect under this part.

The proposed change to § 193.2005(a) was based on former § 193.2005(a)(1), which exempted from siting, design, installation, or construction standards "LNG facilities under construction before the date such standards are published." Former § 193.2005 did not exempt any facilities from operation, maintenance, or fire protection standards.

Although it was never an issue under former § 193.2005(a)(1), AGA and Distrigas were concerned that proposed § 193.2005(a) would disrupt planned LNG facilities that have received government approval for construction but are not yet under construction. These commenters thought that once LNG facilities receive such approval, they should be exempt from any new siting, design, installation, or construction standard adopted after the approval. As support for this view, AGA cited former § 193.2005(a)(2) that was in effect prior to March 31, 2000. This former section exempted LNG facilities from such new standards if the operator had filed an approval application with the appropriate government agency before March 1, 1978.

Former § 193.2005(a)(2) merely stated the filing-based exemption that Congress included in section 152 of Public Law 96–129 (Nov. 30, 1979). This law directed DOT to establish new siting, design, and construction regulations within 180 days after enactment. Congress intended the exemption to ease the impact of these new regulations on LNG facilities

planned before March 1, 1978. However, Congress did not establish a similar exemption for LNG facilities planned subsequently. Instead, it chose to apply a construction-based exemption to these facilities. Under this exemption, new design, installation, and construction regulations do not apply to LNG facilities "existing when the standard is adopted" (49 U.S.C. 60103(c)(3)).

Because Congress limited the filing-based exemption to facilities planned before March 1, 1978, and established a construction-based exemption for later-planned facilities, we do not think that establishing a filing-based exemption for these later-planned facilities would be appropriate. Moreover, LNG plant operators can apply for waivers of any regulation as provided in 49 U.S.C. 60118.

Several commenters were concerned that if we amended § 193.2005(a) as proposed, the fire protection requirements of § 193.2801, which reference NFPA 59A provisions, would have an adverse impact on existing LNG facilities. AGA and Paiute said that the fire protection provisions of NFPA 59A (2001 edition) were very different from the previous requirements of Subpart I, and that industry needs more time to consider the impact of compliance. To illustrate this point, AGA and Paiute referred to section 9.7.2 of NFPA 59A (2001 edition), which reads:

> Those employees who are involved in emergency activities, as determined in accordance with 9.1.2, shall be equipped with the necessary protective clothing and equipment and qualified in accordance with NFPA 600, *Standard on Industrial Fire Brigades.*

AGA and Paiute said many operators relied on local fire departments and did not use plant fire brigades. Duke had a similar concern, saying that NFPA 600 is inconsistent with part 193 training requirements and would prevent plant personnel from carrying out firefighting duties.

As another illustration of differences, AGA and Paiute referred to section 9.3.4 of NFPA 59A (2001 edition), which reads:

> The detection systems determined from the evaluation in 9.1.2 shall be designed, installed, and maintained in accordance with NFPA 72, *National Fire Alarm Code,* or NFPA 1221, Standard for the Installation, Maintenance, and Use of Emergency Services Communications Systems, as applicable.

AGA and Paiute said many LNG plant operators could not test and maintain their systems under NFPA 72 requirements. Similarly, Williams commented that because some NFPA 72 provisions call for the use of licensed or certified personnel, experienced plant technicians could no longer install and maintain detection systems. Williams was concerned that LNG plant operators would have to hire outside contractors who may be unfamiliar with plant systems and hazards.

We think these comments do not accurately reflect the impact of applying § 193.2801 retroactively. Concerning the NFPA 600 issue, section 9.7.2 provides that employees who are involved in emergency activities, as determined in accordance with 9.1.2, must be qualified under NFPA 600. Two provisions of section 9.1.2 require determinations about employees involved in emergencies. Section 9.1.2(8) requires operators to determine "the availability and duties of individual plant personnel * * * during an emergency." Under the second provision, section 9.1.2(9), operators must determine "the protective equipment, special training, and qualification needed by individual plant personnel as specified by NFPA 600, *Standard on Industrial Fire Brigades,* for his or her respective emergency duties." However, an asterisk next to section 9.1.2(9) refers to section A.9.1.2(9), which reads:

> Plant fire brigades are not required by this standard. Where the facility elects to have a fire brigade, NFPA 600, *Standard on Industrial Fire Brigades,* is required for protective equipment and training.

The sum of these interconnected NFPA 59A provisions is that the reference to NFPA 600 in section 9.7.2 applies to determinations made under section 9.1.2(9), which apply only to personnel involved in fire brigades. Thus it is reasonable to conclude that the NFPA 600 qualifications required by 9.7.2 apply only to plant personnel who carry out emergency duties as part of a fire brigade. So section 9.7.2 would not affect the many LNG plants that AGA and Paiute said rely on local fire departments instead of personnel fire brigades for fire fighting.

As for NFPA 72, Subpart I has indirectly referenced this NFPA standard for years. Before the March 1, 2000, final rule took effect, former §§ 193.2819 and 193.2821 required operators to "provide and maintain" gas and fire detection systems in existing LNG plants according to applicable NFPA 59A provisions. Section 9–4.4 of the 1979 edition of NFPA 59A, the first edition referenced in §§ 193.2819 and 193.2821, required that the design, installation, and maintenance of detection systems meet various NFPA 72 standards. In a document published May 24, 1996 (Amdt. 193–11; 61 FR 26121), we updated these NFPA 59A references to the 1996 edition of NFPA 59A. Like the 1979 edition, section 9–4.4 of the 1996 edition references NFPA 72 for the design, installation, and maintenance of detection systems. The 2001 edition of NFPA 59A, proposed in the NPRM as the latest update of NFPA 59A references, contains a similar reference to NFPA 72 in section 9.3.4. In short, our proposal to clarify that operators of existing LNG facilities must comply with the fire protection provisions of NFPA 59A, including its references to NFPA 72, is not a new regulatory approach. The proposal would simply continue an approach that has been in effect since the inception of part 193.

Nevertheless, in view of the comments, we believe many operators may need additional time to meet NFPA 72 qualification and training provisions referenced in section 9.3.4 of NFPA 59A (2001 edition). Some operators may also need additional time to meet NFPA 600 qualification and training provisions related to personnel assigned to fire brigades. Therefore, final § 193.2801 allows operators until September 12, 2005, to meet these qualification and training requirements. This additional compliance time should alleviate commenters' concerns that their personnel do not meet NFPA 72 personnel qualification provisions.

Duke said operators could only accomplish many fire prevention and control provisions of NFPA 59A during plant design and construction. It also said retrofitting existing fire protection equipment to meet these provisions would be very difficult and not always possible. KeySpan had similar concerns, particularly about provisions in NFPA 59A, Chapter 9, concerning emergency shutdown systems; gas, fire, and leak detection systems; and water delivery systems. Duke suggested existing LNG facilities should only have to meet section 9.6, "Maintenance of Fire Protection Equipment," of NFPA 59A (2001 edition). Because some members, particularly a Duke representative, were concerned about applying the fire protection provisions of NFPA 59A retroactively, TPSSC voted unanimously that the proposed update of the NFPA 59A reference in § 193.2801 should apply only to new LNG facilities.

The Duke and Keyspan comments and TPSSC advice raise the issue of whether operators of existing LNG facilities should have to upgrade their fire protection systems to meet the current NFPA 59A standards or just maintain the existing systems. However, we think this issue was settled long ago. In authorizing safety standards for the operation and maintenance of LNG

facilities, Congress gave DOT specific authority to establish requirements for fire prevention and containment equipment (49 U.S.C. 60103(d)(2)). Moreover, Congress did not exclude existing facilities from application of any operation or maintenance standard, although it did exclude these facilities from application of other safety standards (*i.e.*, standards on design, location, installation, construction, initial inspection, and initial testing) (49 U.S.C. 60103(c)). As a result, when we established the fire protection rules in subpart I of part 193, we applied them to both new and existing facilities, and allowed operators of existing LNG facilities more than a year to retrofit their water delivery systems and gas and fire detection systems according to NFPA 59A standards (45 FR 70390, Oct. 23, 1980). Since then, whenever the references to NFPA 59A were updated to later published editions, operators have had to upgrade these systems as necessary to meet the later edition.

The most recent update—to the 1996 edition of NFPA 59A—occurred May 24, 1996 (61 FR 26121), almost 4 years before we published the March 1, 2000, final rule. When that update occurred, LNG plant operators did not say that upgrading their fire protection systems would be difficult, although there was no question that the references to NFPA 59A in Subpart I applied retroactively. This lack of expressed concern about compliance with the 1996 edition is an important consideration in the present upgrading issue, because the provisions of the 1996 and 2001 editions on fire protection systems are very similar. Neither the commenters nor TPSSC pointed to any significant differences between the 1996 and 2001 editions on fire protection systems. Moreover, in spite of Duke's comments about possible compliance difficulties, a recent inspection of Duke's sole LNG plant by RSPA engineers found all the fire protection systems in full compliance with NFPA 59A (1996 edition) requirements. Therefore, we have decided to continue to apply § 193.2801 retroactively as proposed.

Nevertheless, we must recognize that before the March 1, 2000, final rule took effect, subpart I of part 193 did not require that LNG plants meet the fire protection provisions of NFPA 59A on emergency shutdown systems or detection systems other than gas and fire detection systems. In addition, the subsequent confusion over whether § 193.2801 applies to existing LNG facilities may have caused some operators to delay bringing their water delivery and gas and fire detection systems into compliance with the 1996 edition of NFPA 59A. Therefore, final § 193.2801 allows operators until September 12, 2005, to bring these systems into compliance with the 2001 edition. The overall compliance burden should not be great because we see little difference between the 1996 and 2001 editions of NFPA 59A regarding fire protection systems. Also, part 193 requires that LNG plants on which construction began after February 11, 1980, must have emergency shutdown systems.

Columbia disagreed with the conclusion of the draft Regulatory Evaluation that applying operation, maintenance, and fire protection standards retroactively would have little cost impact on operators. One cost it mentioned was having to review and amend its operation and maintenance procedures. Our response to this comment is in the final Regulatory Evaluation, a copy of which is in the docket. As stated below under the heading "Regulatory Analyses and Notices," the Regulatory Evaluation concludes that operators would incur only minimum compliance cost.

Distrigas said the reference to NFPA 59A in § 193.2801 was unclear. This rule provides that "[e]ach LNG facility must meet fire prevention and fire control provisions of ANSI/NFPA 59A." Distrigas stated that operators are confused whether the reference to NFPA 59A includes all provisions of NFPA 59A related to fire prevention and control, all provisions of Chapter 9—Fire Protection, Safety, and Security, or just particular provisions of Chapter 9. Similarly, KeySpan suggested we change § 193.2801 to state exactly which provisions of NFPA 59A (2001 edition) would apply. In consideration of these comments, we have changed § 193.2801 to state: "Each operator must provide and maintain fire protection at LNG plants according to sections 9.1 through 9.7 and section 9.9 of ANSI/NFPA 59A." The remaining section in Chapter 9, section 9.8—Security, relates to matters that part 193 covers in Subpart J–Security.

Williams asked us to clarify that the proposed term "standards in this part" means part 193 standards rather than NFPA standards. Williams was concerned that proposed § 193.2005(a) could be interpreted to require that existing LNG facilities meet operation and maintenance provisions of NFPA 59A (2001 edition). In response to this comment, in final § 193.2005(a) we changed "standards" to "regulations." We also added a parenthetical expression to explain that the term "regulations" includes any materials, such as NFPA 59A provisions, that are incorporated by reference in the regulations.

*Section 193.2017 Plans and Procedures*

We proposed to require that operators review and update their part 193 plans and procedures at intervals not exceeding 15 months, but at least once each calendar year.[1] This proposed interval between reviews was based on a similar requirement applicable to gas pipelines under 49 CFR 192.605(a).

Although Williams supported annual reviews, AGA, Columbia, Distrigas, and Paiute argued that LNG plants do not experience significant enough changes in their operations from year to year to justify annual reviews of plans and procedures. AGA, Distrigas, and Paiute suggested review intervals of 2 years, not to exceed 27 months, noting that § 193.2713(b) requires operations and maintenance personnel to receive refresher training in procedures every 2 years. AGA and Distrigas also suggested reviews would be appropriate whenever a significant change in facilities occurs. However, Distrigas thought reviews should not include drawings, prints, schematics, and other items that are not subject to change. Finally, TPSSC voted unanimously to recommend reviews at two-year intervals.

After carefully considering these comments and TPSSC's advice, we agree that LNG plant operations generally do not change as frequently as gas pipeline operations. So fewer reviews of plans and procedures for LNG plants would be acceptable. We also agree that the 2-year interval for refresher training on operating and maintenance procedures is a suitable guide to how often operators should review their part 193 plans and procedures. Still, as Distrigas suggested, if a significant change in plant facilities occurs in the interim, a 2-year interval could allow too much time to pass before updating related plans and procedures. Therefore, in final § 193.2017(c), we have increased the proposed maximum interval between reviews from 1 to 2 years but also required reviews whenever a component[2] is changed significantly or

[1] Part 193 required plans for personnel health (§ 193.2711) and training (§§ 193.2713–193.2719), and procedures for operations (§ 193.2503), emergencies (§ 193.2509(b)), fluid transfers (§ 193.2513(a)), maintenance (§ 193.2605(b)), and security (§ 193.2903).

[2] Section 193.2007 defines "component" as any parts functioning as a unit, including, but not limited to, piping, processing equipment, containers, control devices, impounding systems, lighting, security devices, fire control equipment, and communication equipment, whose integrity or

Continued

a new component is installed. Reviews would have to include drawings, prints, schematics, and other items that have not changed only to the extent necessary to assure that plans and procedures are consistent with current plant operations.

Based on its own comprehensive operations and maintenance procedures, Columbia disagreed with our assessment in the draft Regulatory Evaluation that annual reviews would have a minimal impact on operators. Our response to this comment is in the final Regulatory Evaluation, a copy of which is in the docket. As stated below under the heading "Regulatory Analyses and Notices," the Regulatory Evaluation concludes that operators would incur only minimum compliance cost.

*Section 193.2705 Construction, Installation, Inspection, and Testing*

This rule requires operators to determine periodically if their inspectors are satisfactorily performing duties assigned under § 193.2307 regarding inspection of construction, installation, and testing activities. However, in the final rule of March 1, 2000, we removed § 193.2307 as no longer necessary in view of similar inspections required by NFPA 59A. So, in the NPRM, we proposed to eliminate the cross-reference to § 193.2307, but still require that operators determine if required inspections of construction, installation, and testing activities are being done satisfactorily.

Only Distrigas commented on proposed § 193.2705(b). It said the proposed rule was unclear because it does not define the inspections operators would have to evaluate. Distrigas also said it was unclear that part 193 even requires inspections of construction, installation, and testing activities.

We do not think Distrigas's comments warrant changing proposed § 193.2705(b). The inspections operators would have to evaluate are those done by "inspectors performing construction, installation, and testing duties required by [part 193]." Although part 193 may not directly require such inspections, it indirectly requires them through cross-references to NFPA 59A. For example, § 193.2303, "Construction acceptance," requires that components pass all applicable inspections prescribed by NFPA 59A. And section 4.1.1 of NFPA 59A (2001 edition) provides that operators must inspect LNG containers (a type of component) "to ensure compliance with the engineering design and material, fabrication, assembly, and test provisions of this standard." Therefore, we have adopted proposed § 193.2705(b) as final.

*Section 193.2717 Training; Fire Protection*

Under § 193.2717, operation and maintenance personnel and their immediate supervisors must undergo initial and continuing fire prevention and control training according to an instruction plan that includes fire drills. To clarify that a fire drill means more than a tabletop exercise, we proposed that fire drills include "evacuation of buildings" and "personnel performing fire control duties."

Peoples Gas asked if fire drills have to include persons other than operator personnel. Fire drills are a mandatory component of fire protection training under § 193.2717. The first sentence of § 193.2717(a) describes who is subject to fire protection training: "All personnel involved in maintenance and operation of an LNG plant, including their immediate supervisors. * * *." Affected personnel would include individuals and contractors hired by operators to perform operation or maintenance functions on plant facilities. Other people who may be on site, such as visitors, vendors, or government safety or emergency personnel, are not subject to training under § 193.2717. Still the training of operator personnel must cover procedures established under § 193.2509 for promptly notifying appropriate local officials of emergencies and then cooperating with them in evacuations and emergencies that require mutual assistance. Given this connection between fire emergency procedures and local officials, we believe some fire drills at LNG plants must include appropriate local officials.

AGA, Columbia, Distrigas, KeySpan, and Williams objected to the proposed fire drill standards as too restrictive considering the various ways of effectively training personnel. These commenters suggested the rule should merely list acceptable fire drill methods and allow operators to decide which methods to use. In support of this view, they stated that local fire departments and state agencies recognize tabletop fire drills nationally, and that such drills could be adequate for LNG plants, depending on plant size, siting, and design. In addition, they said that many classroom courses and hands-on training opportunities are available for LNG operator personnel.

Several TPSSC members also considered the proposed standards too restrictive. They suggested the final rule should allow operators discretion to choose among a variety of options to satisfy the fire drill training requirement. As a result, TPSSC voted unanimously that operators should have discretion to use appropriate options that address fire prevention and response objectives.

Other commenters foresaw difficulties in carrying out the proposed fire drill standards. Distrigas questioned whether "evacuation of buildings" would apply to all buildings at a plant, since a plant-wide drill may not always be feasible. In this regard, Columbia and Paiute were concerned about the potential consequences of leaving vital equipment unmonitored during a drill if technicians had to leave control buildings. Paiute suggested hands-on fire fighting combined with tabletop drills would be an adequate fire drill for these technicians. AGA, KeySpan, and Williams found the term "personnel performing fire control duties" confusing. AGA and Williams thought it could mean that fire control personnel must either control a fire while participating in a drill or just participate in the drill. Similarly, KeySpan questioned whether the proposed standard would require actual operation of water, dry chemical, and foam equipment.

In evaluating these comments and TPSSC advice, we noted that an important purpose of fire protection training under § 193.2717 is to assure that personnel can properly respond to fire emergencies according to plant procedures established under § 193.2509. These procedures cover various practical activities, such as notifying plant personnel and local officials of fires, using appropriate fire control equipment, and evacuating the plant or nearby areas. Because fire drills test how personnel would handle these activities during a real emergency, we proposed that, at a minimum, fire drills include actual evacuations and performance of fire control duties. However, upon further consideration, we agree with commenters and TPSSC that the proposed standards are not easy to understand and may not be necessary for all LNG plants.

Therefore, in the final rule, we replaced the proposed prescriptive standards with a performance standard. We think this approach will accomplish the objectives of the proposal while providing the discretion sought by commenters and TPSSC. Final § 193.2717(c) merely requires that fire drills provide personnel hands-on experience in carrying out their duties under the fire emergency procedures

reliability is necessary to maintain safety in controlling, processing, or containing a hazardous fluid.

required by § 193.2509. To meet this requirement, operators could use a variety of activities that simulate emergency conditions. Tabletop exercises would be acceptable if, as one commenter suggested, they are supplemented by some hands-on experience related to carrying out assigned emergency duties. Under final § 193.2717(c), operators may decide whether to include actual operation of fire control equipment as part of hands-on experience in using the equipment.

*Appendix A to Part 193—Incorporation by Reference*

Part 193 incorporates by reference provisions of various consensus standards, such as NFPA 59A.[3] These documents, along with applicable editions and names and addresses of publishing organizations, are now listed in Appendix A to part 193. In addition, § 193.2013, "Incorporation by reference," provides general information about incorporation by reference. However, the Office of the Federal Register, National Archives and Records Administration, has developed a new policy on the information Federal agencies should publish about referenced materials. To conform to this policy, we are deleting Appendix A and transferring its contents to § 193.2013. As a result, all information about NFPA 59A and other documents referenced in part 193 will appear in one location. Section 193.2013 will also include cross-references to part 193 sections that incorporate the referenced materials.

This final rule adopts in § 193.2013 our proposal to reference the 2001 edition of NFPA 59A, rather than the 1996 edition now in use. Except as discussed above concerning § 193.2801, none of the commenters opposed this update. AGA commented that updating to the 2001 edition would positively affect the outlook for energy supplies. Moreover, because of the renewed national interest in LNG, Sound urged that we expeditiously adopt the proposed update. It said the update would enable operators to avoid the higher costs, delays, and potential constraints on gas supply attendant to designing new LNG facilities under both the 1996 and 2001 editions. Therefore, we are adopting the update as proposed.

To accommodate the update, in §§ 193.2057 and 193.2059 we are changing the referenced sections of the 1996 edition to the corresponding sections of the 2001 edition. Also, throughout part 193, we are changing the designation "ANSI/NFPA 59A" to "NFPA 59A," as the 2001 edition of NFPA 59A does not bear the designation ANSI/NFPA 59A, although the document is an approved American National Standard.

[3] NFPA 59A is referenced in §§ 193.2019, 193.2051, 193.2057, 193.2059, 193.2101, 193.2301, 193.2303, 193.2401, 193.2521, 193.2639, and 193.2801.

**Regulatory Analyses and Notices**

*Executive Order 12866 and DOT Policies and Procedures*

We do not consider this rulemaking to be a significant regulatory action under section 3(f) of Executive Order 12866 (58 FR 51735; Oct. 4, 1993). Therefore, the Office of Management and Budget (OMB) has not received a copy of this rulemaking to review. We also do not consider this rulemaking to be significant under DOT regulatory policies and procedures (44 FR 11034: February 26, 1979).

We prepared a Regulatory Evaluation of the final rules and a copy is in the docket. The evaluation concludes operators would incur only a minimum amount of cost, if any, to comply with the rules.

*Regulatory Flexibility Act*

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), RSPA must consider whether rulemaking actions would have a significant economic impact on a substantial number of small entities. This final rule is consistent with customary practices in the gas pipeline industry. Therefore, based on the facts available about the anticipated impacts of this rulemaking, I certify that this rulemaking will not have a significant impact on a substantial number of small entities.

*Executive Order 13175*

We have analyzed the final rules according to the principles and criteria contained in Executive Order 13084, "Consultation and Coordination With Indian Tribal Governments." Because the rules would not significantly or uniquely affect the communities of the Indian tribal governments nor impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13084 do not apply.

*Paperwork Reduction Act*

*Title:* Recordkeeping for LNG Facilities.

*Summary:* Section 193.2017(c) adds a minor information collection requirement to existing information collection requirements. Under this new requirement, LNG plant operators must review and update their part 193 plans and procedures at least once every 2 calendar years. They must also do so whenever a plant component changes significantly. However, we believe most operators routinely carry out reviews and updates while carrying out their plans and procedures. So we believe the burden of complying with the new review-and-update requirement would be minimal. Because the additional paperwork burden of this rule is likely to be minimal, we believe that submitting an analysis of the burdens to OMB under the Paperwork Reduction Act is unnecessary.

*Use:* Records are kept to facilitate personnel training and other LNG plant activities.

*Respondents (Including the Number of):* There are 150 gas pipeline operators.

*OMB Control Number:* 2137–0048.

*Average Burden Estimate per Operator:* 126.7 hours per year.

*Annual Burden Estimate:* 19,000 hours per year.

*Frequency:* Biennial and on occasion.

*Unfunded Mandates Reform Act of 1995*

This rulemaking does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

*National Environmental Policy Act*

We have analyzed the final rules for purposes of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*). Because the rules parallel present requirements or practices, we have decided they will not significantly affect the quality of the human environment. An environmental assessment document is available for review in the docket.

*Executive Order 13132*

We have analyzed the final rules according to the principles and criteria contained in Executive Order 13132 ("Federalism"). None of the rules (1) has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government; (2) imposes substantial direct compliance costs on State and local governments; or (3) preempts state law. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

*Executive Order 13211*

This rulemaking is not a "Significant energy action" under Executive Order 13211. It is not a significant regulatory action under Executive Order 12866 and

is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, this rulemaking has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.

**List of Subjects in 49 CFR Part 193**

Fire prevention, Incorporation by reference, Pipeline safety, Reporting and recordkeeping requirements, Security measures.

■ Accordingly, RSPA is making the following amendments to 49 CFR part 193:

## PART 193—[AMENDED]

■ 1. The authority citation for part 193 continues to read as follows:

**Authority:** 49 U.S.C. 5103, 60102, 60103, 60111, 60118 and 49 CFR 1.53.

■ 2. Revise § 193.2005(a) to read as follows:

**§ 193.2005 Applicability.**

(a) Regulations in this part governing siting, design, installation, or construction of LNG facilities (including material incorporated by reference in these regulations) do not apply to LNG facilities in existence or under construction when the regulations go into effect.

* * * * *

■ 3. Revise § 193.2013 to read as follows:

**§ 193.2013 Incorporation by reference.**

(a) This section lists materials all or part of which are incorporated by reference in the corresponding sections noted. Applicable editions are in parentheses following the titles of the materials. Earlier editions listed in previous editions of this part may be used for components manufactured, designed, or installed in accordance with those earlier editions at the time they were listed, unless otherwise provided in this part.[1] The Director of the Federal Register has approved these incorporations by reference under 5 U.S.C. 552(a) and 1 CFR part 51. The materials are incorporated as they exist on the date of the approval, and notice of any change in these materials will be published in the **Federal Register**. All materials are available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC, and at the Office of Pipeline Safety, Research and Special Programs Administration, 400 Seventh Street, SW., Washington, DC.

[1] The user must refer to an appropriate previous edition of 49 CFR for a listing of the earlier editions.

(b) The material listed below is available for purchase from the American Gas Association, 400 N. Capitol St., NW., Washington, DC 20001 or from ILI Infodisk, Inc., 610 Winters Avenue, Paramus, New Jersey 07652:

(1) "Purging Principles and Practices" (1975), incorporation by reference approved for §§ 193.2513, 193.2517, and 193.2615.

(c) The material listed below is available for purchase from the American Society of Civil Engineers (ASCE), Parallel Centre, 1801 Alexander Bell Drive, Reston, VA 20191–4400:

(1) ASCE 7–95 "Minimum Design Loads for Buildings and Other Structures" (1995), incorporation by reference approved for § 193.2067.

(d) The material listed below is available for purchase from the American Society of Mechanical Engineers (ASME), Three Park Ave., New York, NY 10016–5990:

(1) ASME Boiler and Pressure Vessel Code, Section VIII, Divisions 1 and 2 (1998), incorporation by reference approved for § 193.2321.

(e) The materials listed below are available for purchase from the Gas Technology Institute (formerly Gas Research Institute (GRI)), 1700 S. Mount Prospect Road, Des Plaines, IL 60018:

(1) GRI–89/0176 "LNGFIRE: A Thermal radiation Model for LNG Fires" (June 29, 1990), incorporation by reference approved for § 193.2057.

(2) GRI–89/0242 "LNG Vapor Dispersion Prediction with the DEGADIS Dense Gas Dispersion Model" (April 1988–July 1990), incorporation by reference approved for § 193.2059.

(3) GRI–96/0396.5 "Evaluation of Mitigation Methods for Accidental LNG Releases, Volume 5: Using FEM3A for LNG Accident Consequence Analyses" (April 1997), incorporation by reference approved for § 193.2059.

(f) The material listed below is available for purchase from the National Fire Protection Association (NFPA), 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269–9101:

(1) NFPA 59A "Standard for the Production, Storage, and Handling of Liquefied Natural Gas (LNG)" (2001 edition), incorporation by reference approved for §§ 193.2019, 193.2051, 193.2057, 193.2059, 193.2101, 193.2301, 193.2303, 193.2401, 193.2521, 193.2639, and 193.2801.

■ 4. Add § 193.2017(c) to read as follows:

**§ 193.2017 Plans and procedures.**

* * * * *

(c) Each operator must review and update the plans and procedures required by this part—

(1) When a component is changed significantly or a new component is installed; and

(2) At intervals not exceeding 27 months, but at least once every 2 calendar years.

**§ 193.2019 [Amended]**

■ 5. In § 193.2019(a), remove "1996 edition" and in its place add "incorporated by reference, *see* § 193.2013".

**§ 193.2051 [Amended]**

■ 6. Amend § 193.2051 as follows:
■ a. In the first sentence, immediately after "ANSI/NFPA 59A" add "(incorporated by reference, *see* § 193.2013)"; and
■ b. Remove "ANSI/NFPA 59A" wherever it appears in the section, and in its place add "NFPA 59A".

**§ 193.2057 [Amended]**

■ 7. Amend § 193.2057 as follows:
■ a. In the introductory text, remove "section 2–2.3.1 of ANSI/NFPA 59A" and in its place add "section 2.2.3.2 of NFPA 59A (incorporated by reference, *see* § 193.2013)"; and
■ b. In paragraph (a), immediately after "GRI–89/0176" add "(incorporated by reference, *see* § 193.2013)".

**§ 193.2059 [Amended]**

■ 8. Amend § 193.2059 as follows:
■ a. In the introductory text, remove "section 2–2.3.2 of ANSI/NFPA 59A" and in its place add "sections 2.2.3.3 and 2.2.3.4 of NFPA 59A (incorporated by reference, *see* § 193.2013)";
■ b. In paragraph (a), add "(incorporated by reference, *see* § 193.2013)" immediately after "GRI–89/0242", and remove "GRI 96/0396.5" and in its place add "GRI–96/0396.5 (incorporated by reference, *see* § 193.2013)"; and
■ c. In paragraph (c), remove "section 2–2.3.3 of ANSI/NFPA 59A" and in its place add "section 2.2.3.5 of NFPA 59A (incorporated by reference, *see* § 193.2013)".

**§ 193.2101 [Amended]**

■ 9. Amend § 193.2101 as follows:
■ a. In the first sentence, immediately after "ANSI/NFPA 59A" add "(incorporated by reference, *see* § 193.2013)"; and
■ b. Remove "ANSI/NFPA 59A" wherever it appears in the section, and in its place add "NFPA 59A".

**§ 193.2301 [Amended]**

■ 10. Amend § 193.2301 as follows:
■ a. In the first sentence, immediately after "ANSI/NFPA 59A" add

"(incorporated by reference, *see* § 193.2013)"; and

■ b. Remove "ANSI/NFPA 59A" wherever it appears in the section, and in its place add "NFPA 59A".

**§ 193.2303 [Amended]**

■ 11. In § 193.2303, remove "ANSI/NFPA 59A" and in its place add "NFPA 59A (incorporated by reference, *see* § 193.2013)".

**§ 193.2401 [Amended]**

■ 12. Amend § 193.2401 as follows:

■ a. In the first sentence, immediately after "ANSI/NFPA 59A" add "(incorporated by reference, *see* § 193.2013)"; and

■ b. Remove "ANSI/NFPA 59A"wherever it appears in the section, and in its place add "NFPA 59A".

**§ 193.2503 [Amended]**

■ 13. Amend § 193.2503 as follows:

■ a. In paragraph (e), remove the semicolon and in its place add a period;

■ b. In paragraph (g), remove the semicolon and the word "and" and add a period in the place of the removed semicolon; and

■ c. Remove paragraph (h).

■ 14. Revise the first sentence of § 193.2507 to read as follows:

**§ 193.2507 Monitoring operations.**

Each component in operation or building in which a hazard to persons or property could exist must be monitored to detect fire or any malfunction or flammable fluid that could cause ahazardous condition.

* * *

■ 15. Revise the first sentence of § 193.2509(b) to read as follows:

**§ 193.2509 Emergency procedures.**

* * * * *

(b) To adequately handle each type of emergency identified under paragraph (a) of this section and each fire emergency, each operator must follow one or more manuals of written procedures. * * *

**§ 193.2521 [Amended]**

■ 16. Amend § 193.2521 as follows:

■ a. In the second sentence, immediately after "ANSI/NFPA 59A" add "(incorporated by reference, *see* § 193.2013)"; and

■ b. Remove "ANSI/NFPA 59A" wherever it appears in the section, and in its place add "NFPA 59A".

■ 17. Revise § 193.2605(b)(2) to read as follows:

**§ 193.2605 Maintenance procedures.**

* * * * *

(b) * * *

(2) A description of other actions necessary to maintain the LNG plant according to the requirements of this subpart.

* * * * *

**§ 193.2639 [Amended]**

■ 18. Amend § 193.2639 as follows:

■ a. In the second sentence, immediately after "ANSI/NFPA 59A" add "(incorporated by reference, *see* § 193.2013)"; and

■ b. Remove "ANSI/NFPA 59A"wherever it appears in the section, and in its place add "NFPA 59A".

■ 19. Revise § 193.2705(b) to read as follows:

**§ 193.2705 Construction, installation, inspection, and testing.**

* * * * *

(b) Each operator must periodically determine whether inspectors performing construction, installation, and testing duties required by this part are satisfactorily performing their assigned functions.

■ 20. In § 193.2717, revise paragraph (a) and add paragraph (c) to read as follows:

**§ 193.2717 Training: fire protection.**

(a) All personnel involved in maintenance and operations of an LNG plant, including their immediate supervisors, must be trained according to a written plan of initial instruction, including plant fire drills, to:

(1) Know the potential causes and areas of fire;

(2) Know the types, sizes, and predictable consequences of fire; and

(3) Know and be able to perform their assigned fire control duties according to the procedures established under § 193.2509 and by proper use of equipment provided under § 193.2801.

* * * * *

(c) Plant fire drills must provide personnel hands-on experience in carrying out their duties under the fire emergency procedures required by § 193.2509.

■ 21. Revise § 193.2801 to read as follows :

**§ 193.2801 Fire protection.**

Each operator must provide and maintain fire protection at LNG plants according to sections 9.1 through 9.7 and section 9.9 of NFPA 59A (incorporated by reference, *see* § 193.2013). However, LNG plants existing on March 31, 2000, need not comply with provisions on emergency shutdown systems, water delivery systems, detection systems, and personnel qualification and training until September 12, 2005.

**Appendix A—[Removed]**

■ 22. Remove appendix A to part 193.

Issued in Washington, DC on March 1, 2004.

**Samuel G. Bonasso,**

*Deputy Administrator.*

[FR Doc. 04–4857 Filed 3–9–04; 8:45 am]

BILLING CODE 4910–60–P

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### 49 CFR Part 571

**[Docket No. NHTSA–04–17230]**

**RIN 2127–AJ15**

## Federal Motor Vehicle Safety Standards; Child Restraint Systems

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

**ACTION:** Final rule, response to petition for reconsideration; correction.

**SUMMARY:** In response to a congressional mandate to consider the need for clearer and simpler labels on child restraint systems, NHTSA amended the requirements for child restraint labels and written instructions. This document responds to a petition for reconsideration of the final rule making those amendments, by amending some of the format and location requirements for child restraint system labels. It also corrects minor errors contained in the regulatory text of the final rule.

**DATES:** The amendments made in this rule are effective September 6, 2004. At your option, you may comply with the amended requirements prior to the effective date. If you wish to petition for reconsideration of this rule, your petition must be received by April 26, 2004.

**ADDRESSES:** If you wish to petition for reconsideration of this rule, you should refer in your petition to the docket number of this document and submit your petition to: Administrator, Room 5220, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** The following persons at the National Highway Traffic Safety Administration:

*For non-legal issues:* Ms. Mary Versailles of the NHTSA Office of Planning and Consumer Programs, at (202) 366–2057.

*For legal issues:* Mr. Christopher Calamita of the NHTSA Office of Chief Counsel at (202) 366–2992.

You may send mail to both of these officials at the National Highway Traffic and Safety Administration, 400 Seventh St., SW., Washington, DC 20590.

**SUPLEMENTARY INFORMATION:**

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## I. Background

On October 1, 2002, NHTSA published a final rule amending the requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 213, *Child restraint systems*, for child restraint labels and the written instructions that accompany child restraints (67 FR 61523; Docket No. 2001–10916.) The October 2002 rulemaking was in response to a mandate by Congress as part of the Transportation Recall Enhancement, Accountability, and Documentation Act (TREAD Act) that required NHTSA to consider whether to prescribe clearer and simpler labels and instructions for child restraints (Pub. L. 106–414, 114 Stat. 1880 (2002)). Among other things, the October 2002 final rule changed the location requirements for some labels, required most labels to be white with black text, simplified the required language of the statements on the labels, mandated that the required label statements be in a bulleted list headed by the statement "WARNING! DEATH or SERIOUS INJURY can occur," and required a new diagram showing the child restraint installed by means of a child restraint anchorage system that conforms with FMVSS No. 225, *Child restraint anchorage systems.*

## II. Petition for Reconsideration

NHTSA received a petition for reconsideration of the October 2002 final rule from David E. Campbell & Associates, Inc. (Campbell; a consultant to child restraint manufacturers). The petition made four requests: to allow the bulleted warning list to be on separate, side-by-side labels; to extend the application of the "as appropriate" condition to the required statement concerning use of belt positioning seats with a child restraint anchorage system; to allow installation illustrations on the child restraint to be covered if the child restraint has been properly installed; and to correct an improper cross reference.

### *a. Side-by-Side Labels*

To reduce the misuse of child restraints, FMVSS No. 213 requires all restraints to be labeled with a warning regarding the consequences of not following instructions, followed by a bulleted list of mandated statements in a specified order. Campbell stated that the language mandated by S5.5.2(g)(1), when printed in the type size required by S5.5.2, could result in a label too large to fit in any single visible location available on the child restraint. Campbell further stated that this problem might be compounded by placing belt routing illustrations at the bottom of the label in order to optimize placement of product information.

Campbell requested that separate, side-by-side labels be allowed if (1) the mandated statements are in the specified sequence, and (2) each label that is not directly below one with the required heading start with the heading as specified in S5.5.2(g)(1). By allowing side-by-side labels, Campbell stated that manufacturers would have greater flexibility in placing the warning statement in visible locations on the restraint.

*Agency Response:* The agency has granted this request. S5.5.2 of FMVSS No. 213 is amended to make it clear that more than one label may be used for the required list of bulleted statements, including side-by-side labels.

In the preamble to the October 2002 final rule, we stated that the bulleted list is not required to be on a single label, so long as the separate components are attached to the child restraint in the correct order and without any intervening labels (67 FR at 61526). At that time, the agency envisioned one label component being placed directly below another label component. Given that the standard practice in reading the English language is to read left to right and top to bottom, this final rule further permits, under limited situations, the separate warning labels to be placed side-by-side. The alternate arrangement for this label is only permitted when available space on the child restraint would not allow a vertical arrangement of the list.

When the side-by-side arrangement is used, the required sequence must be maintained when reading the leftmost label from top to bottom, then the next rightmost label top to bottom. There must be no intervening labels.

We do not agree with the petitioner's suggestion that each separate label must restate the warning heading. We are concerned that multiple headings could overwhelm a consumer given the close proximity of the labels and the strong nature of the required heading (WARNING! DEATH or SERIOUS INJURY can occur). To maintain a clear and direct warning the heading must appear at the top of the first label in the sequence. We are not allowing the warning to appear in the subsequent portions of the label.

### *b. Required Language for Belt-Positioning Seats*

As amended by the October 2002 final rule, S5.5.2(g)(1)(ii) of FMVSS No. 213 requires a statement that directs consumers to install the restraint with the "vehicle's child restraint anchorage system if available or vehicle seat belt." The petitioner pointed out that belt-positioning seats are not designed to be attached with a child restraint anchorage system and therefore, this statement is not applicable to belt-positioning seats. Further, Campbell stated that requiring this statement could cause confusion with another statement mandated for belt-positioning booster seats, which specifies, "use only the vehicle's lap and shoulder belt system when restraining the child in this booster seat." S5.5.2(i)(1)(i). To avoid any potential confusion, Campbell recommended requiring the statement in S5.5.2(g)(1)(ii) only when appropriate.

*Agency Response:* The agency agrees that there was an error in requiring the S5.5.2(g)(1)(ii) statement on labels for belt-positioning seats, since those restraints are not designed to use child restraint anchorage systems. This document corrects that error by not requiring the statement for belt-positioning seats.[1]

### *c. Visibility Requirements for Installation Diagrams*

The October 2002 final rule amended FMVSS No. 213 to require installation information to be visible when the restraint is installed. Campbell expressed concern that the visibility requirement would mandate placing diagrams in a location away from the vehicle belt path and/or in a location less visible because of the limited space available on a child restraint. Campbell requested an amendment that would permit the restraint's installation diagrams to be covered by a vehicle belt when the restraint is properly installed using the belt, provided that the diagrams would be visible if the vehicle seat belt were not routed properly.

[1] In a September 5, 2003, letter to Mr. Campbell, we acknowledged that the reference was in error and stated that we would be correcting it. *www.nhtsa.dot.gov/cars/rules/interps/files/Campbell_petition.html.*

The petitioner cited two examples. The first example, the AngelRide Infant Car Bed, has a forward edge that, when the child restraint is installed, protrudes from the restraint in a triangular manner. Because the belt path is on the upper portion of the forward edge, Campbell stated that under the current requirement the only available location for the installation information would be on the lower portion below the protrusion. This location is visible if the person placing the child in the car bed is looking straight at the restraint from the front, but not visible if that person is looking down on the restraint from above, as is likely once the restraint is installed. Campbell reasoned that information placed along the seat belt routing path would be more visible during installation than information placed underneath a forward-facing overhang.

The second example is the type of restraint that has a detachable base. Typically, the installation diagrams for the base are located on the top surface, visible when the base alone is installed but not visible when the infant carrier is locked on the base. Campbell stated that the base is often installed without the carrier, and the installation instructions can be conveniently located on the top surface of the base. When the carrier is placed on the seat base so that it covers the instructions, the seat base has already been installed and secured.

*Agency Response:* The agency does not agree with the recommendation by Campbell to allow information to be covered by a properly routed seat belt. NHTSA does not want the information to be covered by the belt because if it were, consumers would have to unbuckle and undo or loosen the routing of the belt in order to review or double check the installation information. Vehicle belts are often misused when used to attach child restraints, by not being properly routed or tightened for a secure attachment of the restraint. NHTSA believes that labels should not be placed where to read them the vehicle belt would have to be detached, or its routing undone or loosened or otherwise manipulated, because the child restraint might not be re-secured properly. Consumers might also be discouraged from double checking the information to determine whether they have properly attached the restraint when they would have to undo the belt to do so. Accordingly, this request to allow installation information to be covered when a restraint is properly installed is denied, with one caveat, noted below.[2]

NHTSA is granting the request with respect to restraints with a detachable base. For child restraints with a detachable base, typically the base is installed separately from the carrier portion of the restraint and left attached to the vehicle. Because the base is normally secured without the carrier, in the past some manufacturers have placed the labels with the installation information on the top surface of the base. This allows the user of the system to conveniently reference the installation diagrams and information while installing the base. Even after the carrier portion has been attached to the base, the carrier portion can be easily removed to reference the information related to installation and securing while the base remains secured to the vehicle.

Accordingly, this final rule amends the visibility requirements so that, for child restraints with a detachable base, the information regarding installation and the securing of the child need only be visible when the base alone is installed. Because the detachable base is typically installed without the carrier portion attached, allowing installation information to be on the base places that information in an easily referenced location during installation. Further, because of the ease and frequency with which the carrier portion can be removed from the base, the information remains in a location that is easily accessible by a child restraint user.

*d. Correction of Cross-Reference*

S5.5.2(g)(1) of the October 2002 final rule intended to specify that labels must have a heading meeting the requirements of S5.5.3(k)(3)(i), *i.e.*, the heading area must be yellow with the word "warning" and the alert symbol in black. Campbell notes that S5.5.2(g)(1) erroneously refers to S5.5.2(k)(4)(i) rather than S5.5.2(k)(3)(i). This final rule corrects the cross-reference. In addition, the cross-reference in S5.5.5(g)(1), relating to the heading of the labeling of built-in child restraints, is corrected in the same manner.

## III. Technical Correction

Children who have outgrown child safety seats should use a booster seat until they are at least 8 years old, unless they are 4 feet 9 inches tall. To clearly convey this message, the October 2002 final rule permitted seats that can only be used as belt-positioning seats to be labeled only with the *maximum* height of the children for whom the seat is recommended. References to weight are no longer required for these restraint systems. However, to properly reflect the entire message, a *minimum* height for the children must also be included on the label. Providing a minimum height recommendation will help prevent children from being placed in booster seats prematurely and will help keep children in "toddler" restraints (child restraints with internal harness systems) until they can be safely accommodated by a booster seat. To convey the entire message as intended by the October 2002 final rule, this document amends the labeling requirement for restraints that can only be used as booster seats to require the specification of both the minimum and maximum height of the children for whom the seat can be used. This document amends the relevant requirements for both add-on and built-in booster seats. See, S5.5.2 and S5.5.5 of FMVSS No. 213 as amended below.

## IV. Effective Date

This rule is effective in 180 days. We believe that this is sufficient time for CRS manufacturers to redesign their labels in accordance with the technical correction described above. To permit manufacturers the flexibility of the other amendments made by this document, we are permitting early compliance.

## V. Rulemaking Analyses and Notices

*a. Executive Order 12866 and DOT Regulatory Policies and Procedures*

NHTSA has considered the impact of this rule under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under E.O. 12866, "Regulatory Planning and Review." This action has been determined to be "nonsignificant" under the Department of Transportation's regulatory policies and procedures. The agency concludes that the impacts of the amendments are so minimal that preparation of a full regulatory evaluation is not required. The October 2002 final rule estimated that the cost of changing the location and text of the labels to be only $.01 to $.03 per label. The amendments made by today's final rule will not change that estimate. This final rule does provide slightly more flexibility in the placement of required warning labels.

*b. Regulatory Flexibility Act*

NHTSA has considered the impacts of this rulemaking action under the

[2] NHTSA notes that a manufacturer may place a label where it would be covered by the belt if a duplicate label were placed elsewhere on the restraint, in a location where it is visible when the restraint is installed.

Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). I certify that the amendment will not have a significant economic impact on a substantial number of small entities. The rule will provide manufacturers slightly more flexibility in placing mandatory warning labels on child restraint systems.

*c. Paperwork Reduction Act*

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This document does not establish any new information collection requirements.

*d. National Environmental Policy Act*

NHTSA has analyzed this amendment for the purposes of the National Environmental Policy Act and determined that it will not have any significant impact on the quality of the human environment.

*e. Executive Order 13132 (Federalism)*

Executive Order 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." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, the agency may not issue a regulation with Federalism implications, that imposes substantial direct 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 the agency consults with State and local officials early in the process of developing the proposed regulation. NHTSA may also not issue a regulation with Federalism implications that preempts State law unless the agency consults with State and local officials early in the process of developing the proposed regulation.

The agency has analyzed this rulemaking action in accordance with the principles and criteria contained in Executive Order 13132 and has determined that it does not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The rule will have no substantial effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

*f. Executive Order 12778 (Civil Justice Reform)*

This rule does not have any retroactive effect. Under section 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. Section 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

*g. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272) directs us to use voluntary consensus standards in regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

The agency searched for, but did not find any voluntary consensus standards relevant to this final rule.

*h. Unfunded Mandates Reform Act*

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year (adjusted for inflation with base year of 1995). Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires NHTSA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows NHTSA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation why that alternative was not adopted.

This final rule will not impose any unfunded mandates under the Unfunded Mandates Reform Act of 1995. This rule will not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

*i. Regulation Identifier Number (RIN)*

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

**List of Subjects in 49 CFR Part 571**

Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

■ In consideration of the foregoing, NHTSA amends 49 CFR part 571 as set forth below.

## PART 571–[AMENDED]

■ 1. The authority citation for part 571 continues to read as follows:

**Authority:** 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

■ 2. Section 571.213 is amended as follows:

■ a. by revising the introductory text of S5.5.2(f), adding S5.5.2(f)(4); revising S5.5.2(g)(1) introductory text, revising S5.5.2(g)(1)(ii), and adding S5.5.2(g)(3);

■ b. by revising S5.5.3, and

■ c. by revising the introductory text of S5.5.5(f), and adding S5.5.5(f)(4); and,

■ d. by revising S5.5.5(g)(1).

The revised and added text read as follows:

**§ 571.213 Standard No. 213; Child restraint systems.**

* * * * *

S5.5.2 * * *

(f) One of the following statements, as appropriate, inserting the manufacturer's recommendations for the maximum mass of children who can safely occupy the system, except that booster seats shall not be recommended for children whose masses are less than 13.6 kg. For seats that can only be used as belt-positioning seats, manufacturers must include the maximum and minimum recommended height, but may delete the reference to weight:

* * * * *

(4) Use only with children who weigh between ____ and ____ pounds (*insert appropriate English and metric values; use of word "mass" is optional*) and whose height is between ____ and ____ (*insert appropriate values in English and metric units*).

(g) * * *

(1) A heading as specified in S5.5.2(k)(3)(i), with the statement "WARNING! DEATH or SERIOUS INJURY can occur," capitalized as written and followed by bulleted statements in the following order:

* * * * *

(ii) Secure this child restraint with the vehicle's child restraint anchorage system if available or with a vehicle belt. [For car beds, harnesses, and belt positioning boosters, the first part of the statement regarding attachment by the child restraint anchorage system is optional.]

* * * * *

(3) More than one label may be used for the required bulleted statements. Multiple labels shall be placed one above the other unless that arrangement is precluded by insufficient space or shape of the child restraint. In that case, multiple labels shall be placed side by side. When using multiple labels, the mandated warnings must be in the correct order when read from top to bottom. If the labels are side-by-side, then the mandated warnings must appear top to bottom of the leftmost label, then top to bottom of the next label to its right, and so on. There shall be no intervening labels and the required heading shall only appear on the first label in the sequence.

* * * * *

S5.5.3 The information specified in S5.5.2(f) through (l) shall be located on the add-on child restraint system so that it is visible when the system is installed as specified in S5.6.1, except that for child restraints with a detachable base, the installation diagrams specified in S5.5.2(l) are required to be visible only when the base alone is installed.

* * * * *

S5.5.5 * * *

(f) One of the following statements, inserting the manufacturer's recommendations for the maximum mass of children who can safely occupy the system, except that booster seats shall not be recommended for children whose masses are less than 13.6 kg. For seats that can only be used as belt-positioning seats, manufacturers must include the maximum and minimum recommended height, but may delete the reference to weight:

* * * * *

(4) Use only with children who weigh between ____ and ____ pounds (*insert appropriate English and metric values; use of word "mass" is optional*) and whose height is between ____ and ____ (*insert appropriate values in English and metric units*).

* * * * *

(g) * * *

(1) A heading as specified in S5.5.2(k)(3)(i), with the statement "WARNING! DEATH or SERIOUS INJURY can occur," capitalized as written and followed by the bulleted statement: Follow all instructions on the child restraint and in the vehicle's owner's manual. At the manufacturer's option, the phrase "DEATH or SERIOUS INJURY can occur" in the heading can be on either a white or yellow background.

* * * * *

Issued on: March 3, 2004.

**Jeffrey W. Runge,**

*Administrator.*

[FR Doc. 04–5394 Filed 3–9–04; 8:45 am]

BILLING CODE 4910–59–P

# Proposed Rules

Federal Register
Vol. 69, No. 47
Wednesday, March 10, 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

### Federal Crop Insurance Corporation

### 7 CFR Part 457

**RIN 0563–AB91**

### Common Crop Insurance Regulations; Pecan Revenue Crop Insurance Provisions

**AGENCY:** Federal Crop Insurance Corporation, USDA.

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

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) proposes to add to 7 CFR part 457 a new § 457.167 that provides insurance for pecans. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to convert the pecan revenue pilot crop insurance program to a permanent insurance program for the 2005 and succeeding crop years.

**DATES:** Written comments and opinions on this proposed rule will be accepted until close of business April 9, 2004, and will be considered when the rule is to be made final. The comment period for information collections under the Paperwork Reduction of 1995 continues through May 10, 2004.

**ADDRESSES:** Interested persons are invited to submit written comments to the Director, Product Development Division, Risk Management Agency, United States Department of Agriculture, 6501 Beacon Drive, Stop 0812, Room 421, Kansas City, MO 64133–4676. Comments titled "Pecan Revenue Crop Insurance Provisions" may be sent via the Internet to *DirectorPDD@rm.fcic.usda.gov*, or the Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments. A copy of each response will be available for public inspection and copying from 7 a.m. to 4:30 p.m., c.s.t., Monday through Friday, except holidays, at the above address.

**FOR FURTHER INFORMATION CONTACT:** Linda Williams, Risk Management Specialist, Research and Development, Product Development Division, Risk Management Agency, at the Kansas City, MO, address listed above, telephone (816) 926–7730.

**SUPPLEMENTARY INFORMATION:**

#### Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is not significant for the purpose of Executive Order 12866 and, therefore, has not been reviewed by OMB.

#### Paperwork Reduction Act of 1995

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501), the collections of information in this proposed rule have been approved by the Office of Management and Budget (OMB) under control number 0563–0057 through June 30, 2006.

#### Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

#### Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

#### Regulatory Flexibility Act

Federal Crop Insurance Corporation (FCIC) certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees and compute premium amounts, or notice of loss and production information to determine an indemnity payment in the event of an insured cause of crop loss. Whether a producer has 10 acres or 1000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure small entities are given the same opportunities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities and therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

#### Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

#### Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. *See* the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

#### Executive Order 12988

This proposed rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any action taken by FCIC under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 or 7 CFR part 400, subpart J, as applicable, must be exhausted before any action for judicial review of any determination or action by FCIC may be brought.

**Environmental Evaluation**

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

**Background**

FCIC offered a pilot crop insurance program for pecans beginning with the 1998 crop year in the states of Georgia, New Mexico, and Texas. The pilot program's duration was successfully completed and had a loss ratio of .30. In the 2001 crop year, 185 producers with 38,691 acres were insured under the pilot pecan revenue program.

FCIC intends to convert the pecan revenue pilot crop insurance program to a permanent crop insurance program beginning with the 2005 crop year. To effectuate this, FCIC proposes to amend the Common Crop Insurance regulations (7 CFR part 457), by adding a new section 457.167, Pecan Revenue Crop Insurance Provisions. These provisions will replace and supersede the current unpublished provisions that insure pecans under a pilot program status.

**List of Subjects in 7 CFR Part 457**

Crop insurance, Pecan, Reporting and recordkeeping requirements.

**Proposed Rule**

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation proposes to amend 7 CFR part 457, Common Crop Insurance Regulations, for the 2005 and succeeding crop years as follows:

## PART 457—COMMON CROP INSURANCE REGULATIONS

1. The authority citation for 7 CFR part 457 continues to read as follows:

**Authority:** 7 U.S.C. 1506(l), 1506(p).

2. Section 457.167 is added to read as follows:

**§ 457.167 Pecan revenue crop insurance provisions.**

The Pecan Revenue Crop Insurance Provisions for the 2005 and succeeding crop years are as follows:

FCIC policies: United States Department of Agriculture, Federal Crop Insurance Corporation.

Reinsured policies: (Appropriate title for insurance provider).

Both FCIC and reinsured policies: Pecan Revenue Crop Insurance Provisions.

*1. Definitions*

*AMS.* The Agricultural Marketing Service of the United States Department of Agriculture.

*Amount of insurance per acre.* The amount determined by multiplying your approved average revenue per acre by the coverage level percentage you elect.

*Average gross sales per acre.* Total value of in-shell pecans grown divided by your total acres of pecans during a crop year.

*Approved average revenue per acre.* The total of your average gross sales per acre (in-shell basis) based on at least the most recent consecutive four years of sales records building to ten years and dividing that result by the number of years of average gross sales per acre will be used to determine your total average gross sales per acre. If you provide more than four years of sales records, they must be either the most recent consecutive 6, 8, or 10 years of sales records. If you do not have at least four years of gross sales records, your approved average revenue will be the lowest available dollar span amount provided in the actuarial documents.

*Crop year.* The period beginning February 1 of the calendar year in which the pecan trees bloom and extending through January 31 of the year following such bloom, and will be designated by the calendar year in which the pecan trees bloom.

*Direct marketing.* Sale of the insured crop directly to consumers without the intervention of an intermediary such as wholesaler, retailer, packer, processor, sheller, shipper, buyer or broker. Examples of direct marketing include selling through an on-farm or roadside stand, or a farmer's market, or permitting the general public to enter the field for the purpose of harvesting all or a portion of the crop, or shelling and packing your own pecans.

*Gross sales.* Total value of in-shell pecans grown during a crop year that is used to establish the average gross sales per acre.

*Harvest.* Collecting pecans from the orchard.

*Hedge.* The removal of vegetative growth from the tree to prevent overcrowding of pecan trees.

*Improved pecan varieties.* Pecan trees that have been grafted, are grown in a distinguishable planting pattern, and are maintained under a good farming practice.

*In-shell pecans.* Pecans as they are removed from the orchard with the nutmeats in the shell.

*Interplanted.* Acreage on which two or more crops are planted in any form of alternating or mixed pattern.

*Market price.* The average price per pound for in-shell pecans of the same variety or varieties insured offered by buyers in the area in which you normally market the pecans, but in any case, not less than the actual price received for any sold production or, if the price you received or the average price per pound is inconsistent with the published AMS prices for similar quality pecans on the day you sold your pecans, the average of the AMS prices published during that week. If buyers are not available in your immediate area, we will use the average in-shell price per pound offered by the buyers nearest to your area.

*Net acres.* The insured acreage of pecans multiplied by your share.

*Pound.* A unit of weight equal to sixteen ounces avoirdupois.

*Scion.* Twig or portion of one plant that is grafted onto a stock of another.

*Sequentially thinned.* A method of systematically removing pecan trees for the purpose of improving sunlight penetration and maintaining the proper spacing necessary for continuous production.

*Set Out.* The transplanting of pecan trees into the orchard.

*Unimproved pecan varieties (Native and Seedlings).* All pecan trees that do not meet the definition of improved pecan varieties.

*Top work.* To graft scions of one pecan variety onto the tree or branch of another pecan variety.

*Two-year coverage module.* A two-crop-year subset of a continuous policy in which you agree to insure the crop for both years of the module and we agree to offer the same premium rate, amount of insurance per acre, coverage level, as long as all policy terms and conditions are met for each year of the coverage module, including the timely payment of premium, you have not done anything that would result in a revision to these terms, as specified in this policy, and there have not been any legislative changes that would affect the terms of this policy.

*2. Unit Division*

In lieu of the definition of basic unit in section 1 of the Basic Provisions and section 34 of the Basic Provisions, a unit will be all insurable acreage of pecans in the county in which you have a share on the date coverage begins for the crop year.

*3. Insurance Guarantees and Coverage Levels for Determining Indemnities*

In lieu of section 3 of the Basic Provisions the following applies:

(a) You may select only one coverage level for both years of the two-year coverage module for all pecans in the county. By giving us written notice, you may change the coverage level for the succeeding two-year coverage module

not later than the sales closing date of the next two-year coverage module.

(b) For coverage in excess of catastrophic risk protection, your insurance guarantee will be determined by multiplying your amount of insurance per acre by the number of net acres.

(c) For coverage under the Catastrophic Risk Protection Endorsement, your insurance guarantee equals your approved average revenue multiplied by the percentage listed in the Special Provisions and multiplied by the net acres.

(d) Your amount of insurance per acre will remain the same as stated in the Summary of Coverage for each year of the two-year coverage module unless:

(1) You sequentially thin more than 12.5 percent of your total insured acres, which will result in your average gross sales for those acres thinned being multiplied by a factor of .70 for the first year after thinning, multiplied by a factor of .85 for the second year after thinning, and no reduction following the second harvest after sequentially thinning.

(2) You increase the previous year's insured acreage by more than 12.5 percent, which will result in the recalculation of your approved average revenue using the sales records for the added acreage or, if such sales records are not available for the added acreage, the lowest available dollar span amount provided in the actuarial documents will apply to the added acreage.

(3) You take any other action that may reduce your gross sales below your approved average revenue, which will result in an adjustment to your approved average revenue to conform to the amount of the reduction in gross sales expected from the action.

(e) If you remove a contiguous block of trees from the unit, your insurable acreage will be reduced by the number of acres of trees that have been removed.

(f) You must report your gross sales to us for each year of the two-year coverage module on or before the acreage reporting date for the first year of the next two-year coverage module. If you do not report your gross sales in accordance with this paragraph, we will assign a gross sales amount for any year you fail to report. The gross sales amount assigned by us will not be more than 75 percent of the approved average revenue used to determine your amount of insurance per acre for the current coverage module. The sales reports or your assigned gross sales amount will be used to compute your sales history for the next two-year coverage module. If you filed a claim for any year, the value of harvested production and appraised potential production used to determine your indemnity payment will be the gross sales for that year.

(g) Hail and fire coverage may be excluded from the covered causes of loss for this insurance plan only if additional coverage is selected.

(h) Any person may sign any document relative to pecan crop insurance coverage on behalf of any other person covered by this policy provided that person has a properly executed power of attorney or such other legally sufficient document authorizing such person to sign.

*4. Contract Changes*

In lieu of the provisions contained in section 4 of the Basic Provisions:

(a) We may change the terms of your coverage under this policy between any two-year coverage module. Any change to your policy within a two-year coverage module may only be done in accordance with this policy.

(b) Any changes in policy provisions, amounts of insurance, premium rates, and program dates (except as allowed herein or as specified in section 3) can be viewed on the RMA Web site at *http://www.rma.usda.gov/* or a successor Web site not later than the contract change date contained in these Crop Provisions. We may only revise this information after the contract change date to correct clear errors.

(c) The contract change date is October 31 preceding the next two-year coverage module.

(d) After the contract change date, all changes specified in section 4(b) will also be available upon request from your crop insurance agent. You will be provided, in writing, a copy of the changes to the Basic Provisions, Crop Provisions, and a copy of the Special Provisions not later than 30 days prior to the cancellation date. Acceptance of the changes will be conclusively presumed in the absence of notice from you to change or cancel your insurance coverage by the sales closing date at the end of the two-year coverage module.

*5. Life of Policy, Cancellation and Termination Dates*

(a) In lieu of section 2(a) of the Basic Provisions, this is a continuous policy with a two-year coverage module and will remain in effect for subsequent two-year coverage module, unless canceled in accordance with the terms of this policy or terminated by the operation of this policy.

(b) In lieu of section 2(c) of the Basic Provisions, after acceptance of your application, you may not cancel this policy during the initial two-year coverage module. Thereafter, the policy will continue in force for each succeeding two-year coverage module unless canceled or terminated in accordance with the terms of this policy.

(c) In lieu of section 2(d) of the Basic Provisions, this contract may be canceled by either you or us for the next two-year coverage module by giving written notice on or before the cancellation date.

(d) Your policy may be terminated before the end of the two-year coverage module if you are determined to be ineligible to participate in any crop insurance program authorized under the Act in accordance with section 2(e) of the Basic Provisions or 7 CFR part 400, subpart U.

(e) The cancellation date is January 31 of the second crop year of each two-year coverage module.

(f) The termination date is January 31 of each crop year.

*6. Report of Acreage*

(a) In addition to the requirements of section 6 of the Basic Provisions you must report, by the acreage reporting date designated in the Special Provisions:

(1) Any damage to trees, removal of trees, change in practices, sequential thinning in excess of 12.5 percent of your insured acreage or any other action that may reduce the gross sales below the approved average revenue upon which the amount of insurance per acre is based and the number of affected acres;

(2) The number of bearing trees on insurable and uninsurable acreage;

(3) The age of the trees and the planting pattern;

(4) Any acreage that is excluded under sections 8 or 9; and

(5) Your gross sales receipts as required under section 3(f);

(b) If you fail to notify us of any circumstance stated in section 6(a)(1) that may reduce your gross sales from previous levels, we will reduce your insurance guarantee to an amount to reflect the reduction, or gross sales, at any time that we become aware of the circumstance.

*7. Annual Premium and Administrative Fees*

In addition to the requirements of section 7 of the Basic Provisions, the premium and administrative fees are due annually for each year of the two-year insurance period, except no premium will be due if you elect catastrophic risk protection.

*8. Insured Crop*

In accordance with section 8 of the Basic Provisions, the crop insured will

be all the pecans in the county for which a premium rate is provided by the actuarial documents:

(a) In which you have a share;

(b) That are grown for harvest as pecans;

(c) That are grown in an orchard that, if inspected, is considered acceptable by us;

(d) That are grown on trees that have reached at least the 12th growing season after either being set out or replaced by transplants, or that are in at least the 5th growing season after top work and have produced at least 600 pounds of pecans in-shell per acre in at least one year after having been grafted;

(e) That are grown in a distinguishable planting pattern except as authorized by section 9(a);

(f) That are not grown on trees that are or have been hedged, unless allowed by the Special Provisions or by written agreement; and

(g) That are in an orchard that consists of a minimum of one (1) contiguous acre, unless allowed by written agreement.

*9. Insurable Acreage*

(a) In addition to the requirements of section 9 of the Basic Provisions, the insurable acreage will consist of all reported acreage of improved pecan varieties with less than 10 percent of the acreage being unimproved pecan varieties. Unless allowed by the Special Provisions, acreage in which more than 10 percent of the total acreage is unimproved pecan varieties will be insurable only by written agreement.

(b) In lieu of the provisions in section 9 of the Basic Provisions that prohibit insurance attaching to a crop planted with another crop, pecans interplanted with another perennial crop are insurable if allowed by the Special Provisions or by written agreement.

*10. Insurance Period*

(a) In accordance with the provisions of section 11 of the Basic Provisions:

(1) Coverage begins on February 1 of each crop year. However, for the year of application, we will inspect all pecan acreage and will notify you of the acceptance or rejection of your application not later than 30 days after the sales closing date. If we fail to notify you by that date, your application will be accepted unless other grounds exist to reject the application, as specified in section 2 of the Basic Provisions or the application. You must provide any information that we require for the crop or to determine the condition of the orchard.

(2) The calendar date for the end of the insurance period is January 31 of the crop year.

(b) In addition to the provisions of section 11 of the Basic Provisions:

(1) If you acquire an insurable share in any insurable acreage after coverage begins but on or before the acreage reporting date for the crop year, and after an inspection we consider the acreage acceptable, insurance will be considered to have attached to such acreage on the calendar date for the beginning of the insurance period. Acreage acquired after the acreage reporting date will not be insured.

(2) If you relinquish your insurable share on any insurable acreage of pecans on or before the acreage reporting date for the crop year, insurance will not be considered to have attached to, and no premium or indemnity will be due for such acreage for that crop year unless:

(i) A transfer of coverage and right to an indemnity, or a similar form approved by us, is completed by all affected parties;

(ii) We are notified by you or the transferee in writing of such transfer on or before the acreage reporting date; and

(iii) The transferee is eligible for crop insurance.

*11. Causes of Loss*

(a) In lieu of the first sentence of section 12 of the Basic Provisions, insurance is provided against an unavoidable decline in revenue due to the following causes of loss that occur within the insurance period:

(1) Adverse weather conditions;

(2) Fire, unless weeds and other forms of undergrowth have not been controlled or pruning debris has not been removed from the orchard;

(3) Insects, but not damage due to insufficient or improper application of pest control measures;

(4) Plant disease, but not due to insufficient or improper application of disease control measures;

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption;

(8) Failure of the irrigation water supply, if caused by a cause of loss specified in section 11(a)(1) through (7); or

(9) Decline in market price;

(b) In addition to the causes of loss excluded in section 12 of the Basic Provisions, we will not insure against damage or loss of production due to the inability to market the pecans for any reason other than actual physical damage from an insurable cause specified in this section. For example, we will not pay you an indemnity if you are unable to market due to quarantine, boycott, or refusal of any person to accept production.

*12. Duties in the Event of Damage or Loss*

In addition to the requirements of section 14 of the Basic Provisions, the following will apply:

(a) You must notify us within 3 days of the date harvest should have started if the crop will not be harvested.

(b) You must notify us at least 15 days before any production will be sold by direct marketing. We will conduct an appraisal that will be used to determine your production to count for production that is sold by direct marketing. If damage occurs after this appraisal, we will conduct an additional appraisal. These appraisals, and any acceptable records provided by you, will be used to determine the dollar value of your production to count. Failure to give timely notice that production will be sold by direct marketing will result in an appraised dollar value of production to count that is not less than the amount of insurance per acre for the direct-marketed acreage if such failure results in our inability to make the required appraisal.

(c) If you intend to claim an indemnity, you must notify us at least 15 days prior to the beginning of harvest, or immediately if a loss occurs during harvest, so that we may inspect the damaged production.

(d) You must not sell, destroy or dispose of the damaged crop until after we have given you written consent to do so.

(e) If you fail to meet the requirements of this section, and such failure results in our inability to inspect the damaged production, all such production will be considered undamaged and included as production to count.

*13. Settlement of Claim*

(a) Indemnities will be calculated for each year in the two year coverage module.

(b) We will determine your loss on a unit basis.

(c) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the amount of insurance per acre by the net acres of the insured pecans;

(2) Subtracting the dollar value of the total production to count as determined in section 13(d) from the result of 13(c)(1):

(i) For other than catastrophic risk protection coverage, the total dollar value of the total production to count determined in accordance with section 13(d); or

(ii) For catastrophic risk protection coverage, the result of multiplying the total dollar value of the total production to count determined in accordance with section 13(d) by 55 percent; and

For example:

PECAN REVENUE EXAMPLE

| Year | Acres | Average pounds per acre | Average gross sales per acre |
|---|---|---|---|
| 1996 | 100 | 750 | $1,050 |
| 1995 | 100 | 625 | 625 |
| 1994 | 100 | 200 | 250 |
| 1993 | 100 | 1250 | 750 |
| Total Average Gross Sales Per Acre | | | $2,675 |

The approved average revenue equals the total average gross sales per acre divided by the number of years ($2,675 ÷ 4 = $669).
The amount of insurance per acre equals the approved average revenue multiplied by the coverage level percent ($669 × .65 = $435).
Assume the insured produced 400 pounds of pecans per acre with an average price of $0.75 per pound (400 pounds × $0.75 × 100 net acres = $30,000 total dollar value of production to count).
The indemnity would be:
The Amount of Insurance per acre multiplied by the net acres minus the dollar value of the total production to count equals the dollar amount of indemnity ($435 × 100 = $43,500.00 − $30,000.00 = 13,500).

(d) The dollar value of the total production to count from all insurable acreage will include:

(1) The value of all appraised production as follows:

(i) Not less than your insurance guarantee for acreage;

(A) That is abandoned;

(B) That is sold by direct marketing if you fail to meet the requirements contained in section 12;

(C) That is damaged solely by uninsured causes;

(D) For which no sales records or unacceptable sales records are provided to us;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production;

(iv) Potential production on insured acreage that you intend to abandon or no longer care for, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end. If you do not agree with our appraisal, we may defer the claim only if you agree to continue to care for the crop. We will then make another appraisal when you notify us of further damage or that harvest is general in the area unless you harvested the crop, in which case we will use the harvested production. If you do not continue to care for the crop, our appraisal made prior to deferring the claim will be used to determine the value of production to count; and

(v) The market price, as determined by us, will be used to value all appraised production in section 13(d)(1).

(2) The total dollar value of all harvested production from the insurable acreage will be:

(i) The dollar amount obtained by multiplying the number of pounds of pecans sold by the actual price received; and

(ii) The dollar amount obtained by multiplying the number of pounds of harvested, but not sold production, by the market price as determined by us.

*14. Late and Prevented Planting*

The late and prevented planting provisions of the Basic Provisions are not applicable.

Signed in Washington, DC, on March 1, 2004.

**Ross J. Davidson, Jr.,**

*Manager, Federal Crop Insurance Corporation.*

[FR Doc. 04–5238 Filed 3–9–04; 8:45 am]

BILLING CODE 3410–08–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2004–CE–03–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Cessna Aircraft Company Models 172R, 172S, 182S, 182T, T182T, 206H, and T206H Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to supersede Airworthiness Directive (AD) 2003–24–13, which applies to certain Cessna Aircraft Company (Cessna) Models 172R, 172S, 182S, 182T, T182T, 206H, and T206H airplanes that are equipped with a certain Honeywell KAP 140 autopilot computer system installed on the center instrument control panel near the throttle. AD 2003–24–13 currently requires you to install an update to the operating software of certain KAP 140 autopilot computer system, change the unit's part number, and change the software modification identification tab. This proposed AD is the result of the FAA inadvertently omitting four affected Honeywell KAP 140 autopilot computer system part numbers and an affected airplane serial number from the applicability section of AD 2003–24–13. This proposed AD retains the actions required in AD 2003–24–13, corrects the applicability section, and incorporates a revised installation bulletin issued by Honeywell.

**DATES:** We must receive any comments on this proposed AD by May 10, 2004.

**ADDRESSES:** Use one of the following to submit comments on this proposed AD:

- *By mail:* FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2004–CE–03–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.
- *By fax:* (816) 329–3771.
- *By e-mail: 9-ACE-7-Docket@faa.gov.* Comments sent electronically must contain "Docket No. 2004-CE-03-AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII.

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

General Aviation, 23500 W. 105th Street, Olathe, Kansas 66061.

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2004–CE–03–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Dan Withers, Aerospace Engineer, Wichita Aircraft Certification Office (ACO), FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4196; facsimile: (316) 946–4407.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

*How Do I comment on This Proposed AD?*

We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include "AD Docket No. 2004–CE–03–AD" in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it. We will date-stamp your postcard and mail it back to you.

*Are There Any Specific Portions of This Proposed AD I Should Pay Attention To?*

We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. If you contact us through a nonwritten communication and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend this proposed AD in light of those comments and contacts.

**Discussion**

*Has FAA Taken Any Action to This Point?*

Reports of an unsafe condition on certain Cessna Models 172R, 172S, 182S, 182T, T182T, 206H, and T206H airplanes that are equipped with a Honeywell KAP 140 autopilot computer system caused us to issue AD 2003–24–13, Amendment 39–13382 (68 FR 67789, December 3, 2003).

The KAP 140 autopilot computer system is located on the lower portion of the center instrument control panel near the throttle on these Cessna airplanes. Because of this location on the instrument control panel of the affected Cessna airplanes, the Autopilot Engage (AP) button could unintentionally be depressed when the pilot pushes the throttle knob forward. The pilot could also unintentionally engage the autopilot system by inadvertently bumping the Heading (HDG) button, Altitude (ALT) mode-select button, or Autopilot Engage (AP) button on the KAP 140 computer. Unless intentionally engaged, the pilot does not know that the autopilot system is engaged.

The Honeywell KAP 140 autopilot computer system is also installed in the New Piper, Inc. Model PA–28–181 airplanes. This proposed AD would not affect these airplanes because of the location of the equipment. The equipment is installed on the center instrument panel near the throttle on the affected airplanes, but is installed in the upper half of the instrument control panel on the Piper airplanes. The unsafe condition only exists on certain Cessna airplanes.

Honeywell has updated the operating software for the KAP 140 autopilot computer system, which will now allow only the AP button on the instrument control panel to engage the autopilot system. This update also adds two voice messages if auto trim operation is detected, lengthens the amount of time that the autopilot button must be depressed in order for it to engage, and changes how the flight control display shows that the AP has been engaged.

AD 2003–24–13 currently requires the following on certain Cessna Aircraft Company Models 172R, 172S, 182S, 182T, T182T, 206H, and T206H airplanes that are equipped with a Honeywell KAP 140 autopilot computer system, part number (P/N) 065–00176–2602 , P/N 065–00176–5402, or P/N 065–00176–7702 installed on the center instrument control panel near the throttle:

—Installing an update to the autopilot computer system operating software;
—Changing the unit part number;
—Placing an M tag on the unit serial number tag; and
—Changing the unit's software modification tag.

*What Has Happened Since AD 2003–24–13 to Initiate This Proposed Action?*

We inadvertently omitted four affected Honeywell KAP 140 autopilot computer systems and an affected serial number for Model 182T airplanes from the applicability section. Honeywell revised Installation Bulletin No. 491 to the Rev. 3 level (dated April 2003). We will incorporate this bulletin into this proposed AD.

*What Is the Potential Impact If FAA Took No Action?*

If not corrected, inadvertent and undetected engagement of the autopilot system could cause the pilot to take inappropriate actions.

**FAA's Determination and Requirements of this Proposed AD**

*What Has FAA Decided?*

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. Therefore, we are proposing AD action.

*What Would This Proposed AD Require?*

This proposed AD would retain the actions required in AD 2003–24–13, would add four additional affected Honeywell KAP 140 autopilot computer system part numbers and an affected airplane serial number to the applicability section, and would incorporate a revised Honeywell installation bulletin.

*How Does the Revision to 14 CFR Part 39 Affect This Proposed AD?*

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

**Costs of Compliance**

*How Many Airplanes Does This AD Impact?*

We estimate that this AD affects 3,681 airplanes in the U.S. registry.

*What is the Cost Impact of This AD on Owners/Operators of the Affected Airplanes?*

We estimate the following costs to accomplish the modification:

| Labor cost | Parts cost | Total cost per airplane | Total cost on U.S. operators |
|---|---|---|---|
| 7 workhours × $65 per hour = $455 | Not applicable | $455 | $455 × 3,681 = $1,674,855 |

Not all Cessna Models 172R, 172S, 182S, 182T, T182T, 206H, and T206H airplanes on the U.S. registry have a KAP 140 autopilot computer system installed.

Honeywell will provide warranty credit for labor and parts to the extent noted under WARRANTY INFORMATION in Honeywell Service Bulletin No: KC 140–M1, dated August 2002, and Honeywell Installation Bulletin No. 491, Rev. 3, dated April 2003.

*What Is the Difference Between the Cost Impact of This Proposed AD and the Cost Impact of AD 2003–24–13?*

The difference is the addition of four KC 140 autopilot systems and one airplane serial number to the applicability section of this proposed AD. There is no difference in cost to perform the proposed modification.

**Regulatory Findings**

*Would This Proposed AD Impact Various Entities?*

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

*Would This Proposed AD Involve a Significant Rule or Regulatory Action?*

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

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this proposed AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include "AD Docket No. 2004–CE–03–AD" in your request.

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

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2003–24–13, Amendment 39–13382 (68 FR 67789, December 4, 2003), and by adding a new AD to read as follows:

**Cessna Aircraft Company:** Docket No. 2004–CE–03–AD

**When Is the Last Date I Can Submit Comments on This Proposed AD?**

(a) We must receive comments on this proposed airworthiness directive (AD) by May 10, 2004.

**What Other ADs Are Affected by This Action?**

(b) This AD supersedes AD 2003–24–13.

**What Airplanes Are Affected by This AD?**

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

(1) equipped with a KAP 140 autopilot computer system, part number (P/N) 065–00176–2501, P/N 065–00176–2602 , P/N 065–00176–5001, P/N 065–00176–5101, P/N 065–00176–5201, P/N 065–00176–5402, or P/N 065–00176–7702, all serial numbers; and

(2) certificated in any category.

| Model | Serial numbers |
|---|---|
| 172R | 17280001 through 17281073, 17281075 through 17281127, and 17281130 |
| 172S | 172S8001 through 172S9195, 172S9197, 172S9198, and 172S9200 through 172S9203 |
| 182S | 18280001 through 18280944 |
| 182T | 18280945 through 18281065, 18281067 through 18281145, 18281147 through 18281163, 18281165 through 18281167, and 18281172 |
| T182T | T18208001 through T18208109, and T18208111 through T18208177 |
| 206H | 20608001 through 20608183, 20608185, 20608187, and 20608188 |
| T206H | T20608001 through T20608039, T20608041 through T20608367, T20608369 through T20608379, T20608381, T20608382, and T20608385 |

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

(d) This AD is the result of reports of inadvertent and undetected engagement of the autopilot system. The actions specified in this AD are intended to prevent unintentionally engaging the KAP 140 autopilot computer system, which could cause the pilot to take inappropriate actions.

**What Must I Do To Address This Problem?**

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

| Actions | Compliance | Procedures |
|---|---|---|
| (1) *For airplanes previously affected by AD 2003–24–13:* install and update the KC 140 autopilot computer system operating software. | Within the next 100 hours time-in-service (TIS) after January 20, 2004 (the effective date of AD 2003–24–13), unless already done. | Follow Cessna Service Bulletin SB02–22–01, dated November 25, 2002, and Honeywell Service Bulletin No: KC 140–M1, dated August 2002, as specified in Honeywell Installation Bulletin No. 491, Rev. 3, dated April 2000. |

| Actions | Compliance | Procedures |
|---|---|---|
| (2) *For airplanes previously affected by AD 2003–24–13:* do the following:. (i) Change the unit part number by attaching flavor sticker, part number (P/N) 057–02203–0003, on the unit's serial tag; (ii) Attach an M decal, P/N 057–02984–0501, in front of the unit serial number (this indicates that the unit's P/N has been changed); and (iii) Attach a software mod tag, P/N 057–05287–0301, in place of the old tag to indicate the software change to SW MOD 03/01 | Prior to further flight after installing the update to the KC 140 autopilot computer system operating software as specified in paragraph (e)(1) of this AD, unless already done. | Follow Honeywell Service Bulletin No: KC 140–M1, dated August 2002, as specified in Cessna Service Bulletin SB02–22–01, dated November 25, 2002. |
| (3) *For airplanes not affected by AD 2003–24–13:* install and update the KC 140 autopilot computer system operating software. | Within the next 100 hours time-in-service (TIS) after the effective date of this AD. | Follow Honeywell Installation Bulletin No. 491, Rev. 3, dated April 2003; Cessna Service Bulletin SB02–22–01, dated November 25, 2002; Honeywell Service Bulletin No: KC 140–M1, dated August 2002; and Cessna Single Engine Service Bulletin SB98–22–01, dated May 18, 1988, as applicable. |
| (4) *For all affected airplanes:* install only KC 140 autopilot computer systems, part number (P/N) 065–00176–2501, P/N 065–00176–2602, P/N 065–00176–5001, P/N 065–00176–5101, P/N 065–00176–5201, P/N 065–00176–5402, or P/N 065–00176–7702, that have been modified as specified in paragraphs (e)(1), (e)(2), and (e)(3) of this AD. | As of the effective date of this AD ..... | Not applicable. |

(f) You may request a revised flight manual supplement from Cessna or at the address specified in paragraph (h) of this AD.

**May I Request an Alternative Method of Compliance?**

(g) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19.

(1) Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Wichita Aircraft Certification (ACO), FAA. For information on any already approved alternative methods of compliance, contact Dan Withers, Aerospace Engineer, Wichita Aircraft Certification Office (ACO), FAA. 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4196; facsimile: (316) 946–4407.

(2) Alternative methods of compliance approved in accordance with AD 2003–24–13, which is superseded by this AD, are approved as alternative methods of compliance with this AD.

**May I Get Copies of the Documents Referenced in This AD?**

(h) You may get copies of the documents referenced in this AD from Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517–5800; facsimile: (316) 942–9006 and Honeywell, Business, Regional, and General Aviation, 23500 W. 105th Street, Olathe, Kansas 66061. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on March 4, 2004.

**Sandra J. Campbell,**

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

[FR Doc. 04–5334 Filed 3–9–04; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**24 CFR Part 990**

**[Docket No. FR–4874–N–04]**

## Operating Fund Program; Establishment of Negotiated Rulemaking Committee and Notice of First Meeting

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Establishment of negotiated rulemaking advisory committee and first meeting.

**SUMMARY:** HUD announces the establishment of a negotiated rulemaking advisory committee under the Federal Advisory Committee Act and the Negotiated Rulemaking Act of 1990. The purpose of the committee is to provide advice and recommendations on developing a rule for effectuating changes to the Public Housing Operating Fund Program in response to the Harvard University Graduate School of Design's "Public Housing Operating Cost Study." The Consolidated Appropriations Act, 2004 requires publication of a final rule developed under the Negotiated Rulemaking Act of 1990, by July 1, 2004. The committee consists of representatives with an interest in the outcome of the changes. This document announces the committee members and the dates, location, and agenda for the first committee meeting.

**DATES:** The first committee meeting will be held on March 30–April 1, 2004. On each day, the meeting will start at approximately 8:30 a.m. and run until approximately 5 p.m., unless the committee agrees otherwise.

**ADDRESSES:** The first committee meeting will take place at the HUD Headquarters Building (Basement Rooms 176, 178, and 180), 451 Seventh Street, SW., Washington, DC 20410. Committee members and the public are to enter the HUD Headquarters Building through the entrance at the corner of Seventh and D Streets, SW. (the North entrance). Committee members and the public should arrive early to ensure timely access to the building. A photo ID is required.

**FOR FURTHER INFORMATION CONTACT:** Chris Kubacki, Director, Funding and Financial Management Division, Public and Indian Housing—Real Estate Assessment Center, Suite 800, Department of Housing and Urban Development, 1280 Maryland Ave., SW., Washington, DC 20024–2135;

telephone (202) 708–4932 (this telephone number is not toll-free). Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:**

**I. Statutory Background**

HUD currently uses a formula approach called the Operating Fund Formula to distribute operating subsidies to public housing agencies (PHAs). A regulatory description of the Operating Fund Formula can be found at 24 CFR part 990. The Operating Fund Formula regulations were developed through negotiated rulemaking procedures. Negotiated rulemaking for an Operating Fund Formula was initiated in March 1999, and resulted in a proposed rule, published on July 10, 2000 (65 FR 42488), which was followed by an interim rule published on March 29, 2001 (66 FR 17276). The March 29, 2001, interim rule established the Operating Fund Formula that is currently in effect.

Generally, the amount of subsidy received by a PHA is the difference between an "allowable expense level" and projected rental income. Each PHA calculates its Operating Fund Formula eligibility annually and submits a request for funding as part of its budget process. The amount of subsidy can vary from one year to the next as a result of the annual appropriations process and accounts for approximately 57 percent of a PHA's total operating revenue, the balance coming from rents and other sources (*e.g.*, fees). For fiscal year 2003, HUD distributed over $3.34 billion in operating subsidies to PHAs.

On January 28, 2004 (69 FR 4212), HUD published a document announcing its intent to establish an advisory committee to provide advice and recommendations on developing a rule for effectuating changes to the Operating Fund Program in response to the Harvard University Graduate School of Design's "Public Housing Operating Cost Study" (Harvard Cost Study). A correction to the document was published on February 6, 2004 (69 FR 5796), which corrected an error in the list of proposed committee members. During the negotiated rulemaking for the Operating Fund Formula, Congress in the Conference Report (H. Rept. 106–379, October 13, 1999) accompanying HUD's Fiscal Year (FY) 2000 Appropriation Act (Pub. L. 106–74, approved October 20, 1999) directed HUD to contract with the Harvard University Graduate School of Design (Harvard GSD) to conduct a study on the costs incurred in operating well-run public housing. Harvard GSD issued a final report, the Harvard Cost Study, on June 6, 2003. In Section 222 of the Consolidated Appropriations Act, 2004 (Pub. L. 108–199, approved January 23, 2004), Congress directed the Secretary to conduct negotiated rulemaking with the publication of a final rule by July 1, 2004. HUD's January 28, 2004, document: (1) Advised the public of HUD's intent to establish the negotiated rulemaking committee; (2) solicited public comments on the proposed membership of the committee; and (3) explained how persons could be nominated for membership on the committee.

**II. HUD's Negotiated Rulemaking Advisory Committee on the Operating Fund Program**

This document announces HUD's establishment of the Negotiated Rulemaking Advisory Committee on the Operating Fund Program. The purpose of the committee is to provide advice and recommendations on developing a rule for effectuating changes to the Public Housing Operating Fund Program in response to the Harvard Cost Study. As noted above, the January 28, 2004, document tentatively identified a list of possible interests and parties to be represented on the negotiated rulemaking committee, and requested public comment on the proposed committee membership. The public comment period on the January 28, 2004, document closed on February 27, 2004. HUD received 30 comments on the document, including comments from PHAs, PHA associations, nonprofit organizations, and other interested parties. After careful consideration of all the comments received on the January 28, 2004, document HUD has revised the proposed list of committee members by adding the following members to the committee:

- Meade County Housing and Redevelopment Commission, Sturgis, SD.
- Veronica Sledge, President of Resident Advisory Board and President of Victory Point RMC, Jacksonville, FL.

The final list of committee members includes representatives of PHAs, PHA organizations, tenant groups, other interested parties, and HUD. HUD believes the group as a whole represents a proper balance of interests that are willing and able to work within a consensus framework on the new Operating Fund Program. The PHA representatives on the committee have been selected to reflect the diversity of PHAs in terms of size, location, and special circumstances.

The final list of members for the Negotiated Rulemaking Advisory Committee on the Operating Fund Program is as follows:

- Housing Agencies

1. Atlanta Housing Authority, Atlanta, GA
2. New York City Housing Authority, NYC, NY
3. Puerto Rico Housing Authority, San Juan, PR
4. Chicago Housing Authority, Chicago, IL
5. Dallas Housing Authority, Dallas, TX
6. Anne Arundel Housing Authority, Anne Arundel, MD
7. Indianapolis Housing Authority, Indianapolis, IN
8. Albany Housing Authority, Albany, NY
9. Jackson Housing Authority, Jackson, MS
10. Boise City/Ada County Housing Authority, Boise City, ID
11. Reno Housing Authority, Reno, NV
12. Alameda County Housing Authority, Hayward, CA
13. Athens Housing Authority, Athens, GA
14. Housing Authority of East Baton Rouge, Baton Rouge, LA
15. Housing Authority of the City of Montgomery, Montgomery, AL
16. Meade County Housing and Redevelopment Commission, Sturgis, SD

- Tenant Organizations

1. Jack Cooper, Massachusetts Union of Public Housing Tenants, Boston, MA

- Public Housing Tenant

1. Veronica Sledge, President of Resident Advisory Board and President of Victory Point RMC, Jacksonville, FL

- Other Interests/Policy Groups

1. Ned Epstein, Housing Partners, Inc.
2. Howard Husock, Director of Kennedy School Case Program
3. Greg Byrne, Project Director for Harvard Cost Study
4. Dan Anderson, Bank of America
5. David Land, Lindsey and Company
6. Council of Large Public Housing Agencies
7. National Association of Housing and Redevelopment Officials
8. Public Housing Authorities Directors Association
9. National Organization of African Americans in Housing

- Federal Government

1. Assistant Secretary Michael Liu, U.S. Department of Housing and Urban Development

2. Deputy Assistant Secretary William Russell, U.S. Department of Housing and Urban Development

**III. First Committee Meeting**

The first meeting of the Negotiated Rulemaking Committee on the Operating Fund Program will be held on March 30, March 31, and April 1, 2004. On each day, the meeting will start at approximately 8:30 a.m. and run until approximately 5 p.m., unless the committee agrees otherwise. On all three days, the meetings will take place at the HUD Headquarters Building (Basement Rooms 176, 178, and 180), 451 Seventh Street SW., Washington, DC 20410. The agenda planned for the meeting includes: (1) Orienting members to the negotiated rulemaking process; (2) establishing a basic set of understandings and ground rules (protocols) regarding the process that will be followed in seeking a consensus; and (3) discussion of the issues relating to the development of changes in response to the Harvard Cost Study.

The meeting will be open to the public without advance registration. Public attendance may be limited to the space available. Members of the public may make statements during the meeting, to the extent time permits, and file written statements with the committee for its consideration. Written statements should be submitted to the address listed in the **FOR FURTHER INFORMATION CONTACT** section of this document. Summaries of committee meetings will be available for public inspection and copying at the address in the same section.

**IV. Future Committee Meetings**

A second meeting is scheduled for April 13–15, 2004, at the same location. Each day of the April meeting is tentatively scheduled to begin at approximately 8:30 a.m. and run until 5 p.m., unless the committee agrees otherwise. Notices of all future meetings will be published in the **Federal Register**. HUD will make every effort to publish such notices at least 15 calendar days prior to each meeting.

Dated: March 4, 2004.

**Paula O. Blunt,**

*General Deputy Assistant Secretary for Public and Indian Housing.*

[FR Doc. 04–5395 Filed 3–9–04; 8:45 am]

**BILLING CODE 4210–33–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 117

**[CGD07–04–010]**

**RIN 1625–AA09**

## Drawbridge Operation Regulations; Palm Beach County Bridges, Atlantic Intracoastal Waterway, Palm Beach County, Florida

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to change the regulations governing the operation of most of the Palm Beach County bridges across the Atlantic Intracoastal Waterway, Palm Beach County, Florida. The proposed rule would require these bridges to open twice an hour with the Boca Club, Camino Real bridge opening three times per hour. The proposed schedule is based on a test the Coast Guard held from March, 2003, until June, 2003. The proposed schedules would meet the reasonable needs of navigation while accommodating increased vehicular traffic throughout the county.

**DATES:** Comments and related material must reach the Coast Guard on or before May 10, 2004.

**ADDRESSES:** You may mail comments and related material to Commander (obr), Seventh Coast Guard District, 909 SE. 1st Avenue, Room 432, Miami, Florida 33131. Commander (obr) maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of [CGD07–04–010] and will be available for inspection or copying at Commander (obr), Seventh Coast Guard District, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. Barry Dragon, Seventh Coast Guard District, Bridge Branch, telephone number 305–415–6743.

**SUPPLEMENTARY INFORMATION:**

**Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD07–04–010], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

**Public Meeting**

We do not now plan to hold a public meeting. However, you may submit a request for a meeting by writing to Bridge Branch, Seventh Coast Guard District, at the address under **ADDRESSES**, explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

**Background and Purpose**

The Coast Guard performed a test of the proposed schedule on the Palm Beach County bridges in the spring of 2003 that was published in the **Federal Register**, March 19, 2003, (68 FR 13227)(CGD07–03–031). The test was for 90 days to collect data to determine the feasibility of changing the regulations on most of the bridges in Palm Beach County to meet the increased demands of vehicular traffic but still provide for the reasonable needs of navigation. The test results indicated that the proposed schedule would improve vehicular traffic flow while still meeting the reasonable needs of navigation. During the test period, vessel requests for openings remained at or below an average of two per hour with the exception of Camino Real bridge. A computer modeling of that bridge prescribed an opening schedule of three times per hour as an optimum for a combination of vehicular and vessel traffic. The schedules allowed both vehicular and vessel traffic the opportunity to predict on a scheduled basis, when the bridges would possibly be in the open position. We received 2,541 comments, 1,560 were in favor of the test schedules, 965 were in favor of keeping the existing schedules and 16 comments provided an optional modification of existing schedules. Two petitions were received with 1,018 signatures for the new test schedule, 840 were opposed to the new test schedule. We received one form letter from 138 commentors who were for the new test schedule. We received 9 comments for the new schedule from local government agencies and 529 from individual citizens, 404 were for the new schedules and 125 were opposed to the new schedule. Of all the comments,

1,958 specifically concerned the Boca Club, Camino Real bridge. The remaining comments were general in nature and were not directed at a specific bridge in the test. The commentors for the new schedules represented vehicular operators and those against the new schedule were vessel operators.

The change in operating regulations was requested by various Palm Beach County public officials to ease vehicular traffic, which has overburdened roadways, and to standardize bridge openings throughout the county for vessel traffic. The proposed rule would allow most of the bridges in Palm Beach County to operate on a standardized schedule, which would meet the reasonable needs of navigation and improve vehicular traffic movement. The proposed rule would provide for staggered schedules in order to facilitate the movement of vessels from bridge to bridge along the Atlantic Intracoastal Waterway.

The existing regulations governing the operation of the Palm Beach County bridges are published in 33 CFR 117.5 and 117.261. This proposed rule includes all bridges across the Atlantic Intracoastal Waterway in Palm Beach County, except Jupiter Lighthouse bridge, mile 1004.1, and Jupiter Federal bridge, mile 1004.8. These two bridges would continue to operate on their current schedules.

Based on the results of the test that was conducted during the spring of 2003 and a computer modeling of the Palmetto Park and Camino Real bridges, the proposed rule would not adversely affect the reasonable needs of navigation.

**Discussion of Proposed Rule**

The Coast Guard proposes to change the operating regulations of most of the bridges in Palm Beach County that cross the Atlantic Intracoastal Waterway. This proposed rule includes all bridges across the Atlantic Intracoastal Waterway in Palm Beach County, except Jupiter Lighthouse bridge, mile 1004.1, and Jupiter Federal bridge, mile 1004.8. The proposed rule would allow the following bridges to operate as indicated:

Open on Signal—
- Lake Avenue, mile 1028.8
- Woolbright Road, mile 1035.8

Open on the hour and half hour—
- Indiantown Road, mile 1006.2
- Donald Ross, mile 1009.3
- PGA Boulevard, mile 1012.6
- Royal Park (SR 704), mile 1022.6
- Southern Boulevard (SR 700/80), mile 1024.7
- Ocean Avenue (Lantana), mile 1031.1
- Ocean Avenue (Boynton Beach), mile 1035.0
- N.E. 8th Street (George Bush), mile 1038.7
- Spanish River, mile 1044.9
- Palmetto Park, mile 1047.5

Open on the quarter hour and three quarter hour—
- Parker (US 1), mile 1013.7
- Flagler Memorial (SR A1A), mile 1021.9
- Atlantic Avenue (SR 806), mile 1039.6
- Linton Boulevard, mile 1041.1

Open on the hour, 20 minutes past the hour and 40 minutes past the hour—
- Boca Club, Camino Real, mile 1048.2

This proposed rule does not affect the Jupiter Lighthouse bridge, mile 1004.1, and the Jupiter Federal bridge, mile 1004.8, which would continue to operate on their current schedules. Public vessels of the United States, tugs with tows and vessels in distress will be passed at anytime.

**Regulatory Evaluation**

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the policies and procedures of the Department of Homeland Security is unnecessary. The proposed rule would provide timed openings for vehicular traffic and sequenced openings for vessel traffic and would have little, if any, economic impact.

**Small Entities**

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If this proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

**Collection of Information**

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

**Federalism**

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and determined that it does not have implications for federalism.

**Unfunded Mandates Reform Act**

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

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

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

**Indian Tribal Governments**

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination With Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

**Energy Effects**

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

**Environment**

We have analyzed this proposed rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42.U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (32)(e), an "Environmental Analysis Check List" and a "Categorical Exclusion Determination" are not required for this rule.

**List of Subjects in 33 CFR Part 117**

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); Section 117.255 also issued under authority of Pub. L. 102–587, 106 Stat. 5039.

2. In § 117.261 add paragraphs (q) and (y); revise paragraphs (r) through (x) and (z) and paragraphs (aa) and (aa–1); and add new paragraphs (z–1), (z–2) and (z–3) to read as follows:

**§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Key Largo.**

* * * * *

(q) *Indiantown Road bridge, mile 1006.2.* The draw shall open on the hour and half-hour.

(r) *Donald Ross bridge, mile 1009.3, at North Palm Beach.* The draw shall open on the hour and half-hour.

(s) *PGA Boulevard bridge, mile 1012.6, at North Palm Beach.* The draw shall open on the hour and half-hour.

(t) *Parker (US–1) bridge, mile 1013.7, at Riviera Beach.* The draw shall open on the quarter and three-quarter hour.

(u) *Flagler Memorial (SR A1A) bridge, mile 1020.9, at Palm Beach.* The draw shall open on the quarter and three-quarter hour.

(v) *Royal Park (SR 704) bridge, mile 1022.6, at Palm Beach.* The draw shall open on the hour and half-hour.

(w) *Southern Boulevard (SR 700/80) bridge, mile 1024.7, at Palm Beach.* The draw shall open on the hour and half-hour.

(x) *Ocean Avenue bridge, mile 1031.0, at Lantana.* The draw shall open on the hour and half-hour.

(y) *Ocean Avenue bridge, mile 1035.0, at Boynton Beach.* The draw shall open on the hour and half-hour.

(z) *N.E. 8th Street (George Bush) bridge, mile 1038.7, at Delray Beach.* The draw shall open on the hour and half-hour.

(z–1) *Atlantic Avenue (SR 806) bridge, mile 1039.6, at Delray Beach.* The draw shall open on the quarter and three-quarter hour.

(z–2) *Linton Boulevard bridge, mile 1041.1, at Delray Beach.* The draw shall open on the quarter and three-quarter hour.

(z–3) *Spanish River bridge, mile 1044.9, at Boca Raton.* The draw shall open on the hour and half-hour.

(aa) *Palmetto Park bridge, mile 1047.5, at Boca Raton.* The draw shall open on the hour and half-hour.

(aa–1) *Boca Club, Camino Real bridge, mile 1048.2, at Boca Raton.* The draw shall open on the hour, twenty minutes past the hour and forty minutes past the hour.

* * * * *

Dated: February 24, 2004.

**Harvey E. Johnson, Jr.,**

*Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.*

[FR Doc. 04–5348 Filed 3–9–04; 8:45 am]

BILLING CODE 4910–15–P

## POSTAL RATE COMMISSION

**39 CFR Part 3001**

**[Docket No. RM2004–2; Order No. 1394]**

## New Reporting Requirements for Nonpostal Services

**AGENCY:** Postal Rate Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission proposes amending its rules to establish certain reporting requirements for the Postal Service's nonpostal services and products. The relatively recent expansion of nonpostal services and products offered by the Postal Service has caused various stakeholders to express concerns that those services and products may be cross-subsidized by jurisdictional services. The proposed rule is designed primarily to provide sufficient information regarding the Postal Service's nonpostal services and products to determine the presence (or absence) of cross-subsidies. The data are needed so that the Commission can recommend rates for jurisdictional services that comport with the requirements of the Postal Reorganization Act.

**DATES:** Initial comments due April 15, 2004; reply comments due May 17, 2004.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.*

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Sharfman, general counsel, at 202–789–6818.

**SUPPLEMENTARY INFORMATION:**

**Regulatory History**

*69 FR 3288 (January 23, 2004)*

The Commission proposes to amend its rules of practice and procedure, 39 CFR 3001.1 *et seq.*, to establish certain reporting requirements for the Postal Service's non-jurisdictional activities. The proposed amendments are designed to better enable the Commission to fulfill its ratemaking responsibilities under chapter 36 of the Postal Reorganization Act, 39 U.S.C. 3601 *et seq.*

1. Background

In Order No. 1388, the Commission denied, in part, and granted, in part, a petition filed by Consumer Action (CA) requesting the Commission to initiate a proceeding to consider the jurisdictional status of 14 services provided by the Postal Service to the public without prior Commission approval.[1] In granting the request that it initiate a rulemaking proceeding to establish reporting requirements for the Postal Service's non-jurisdictional activities, the Commission indicated that it would, in the near future, issue a notice of proposed rulemaking regarding such reporting requirements. This order fulfills that undertaking, setting forth the proposed rules governing the information to be filed by the Postal Service in support of its formal rate requests.

In urging the Commission to initiate a rulemaking proceeding, CA, joined by the Office of the Consumer Advocate (OCA), refers to the Commission's long-standing policy of reviewing the costs and revenues of non-jurisdictional services to ensure the absence of cross-subsidies.[2] Citing Commission precedent, CA and OCA argue that the Commission must have accurate financial data regarding non-jurisdictional services to forecast accurately the costs and revenues of jurisdictional (domestic) services.[3] They contend that absent that information, the Commission cannot determine the net revenues needed from jurisdictional services to enable the Postal Service to achieve a break-even financial result as required by section 3621 of the Act.[4]

To test for cross-subsidies, CA and OCA urge "application of the incremental cost test for non-jurisdictional services in the aggregate, for each individual non-jurisdictional service, and for each group of such services."[5] In addition, CA and OCA argue that any losses associated with nonpostal services be excluded from amounts recovered through prior year losses. To that end, they suggest that in omnibus rate proceedings the Postal Service be required to submit evidence separating past jurisdictional losses from non-jurisdictional losses.[6]

The Postal Service contends that the specific rules proposed by CA and OCA are unnecessary and unauthorized.[7] It characterizes them as having two purposes, namely, inducing it to account for nonpostal services in a way that conforms to CA/OCA's judgment, and arming the Commission with data to enable it to critique the specific rates and fees established by the Postal Service for each nonpostal service. The Postal Service concludes that "[b]oth objectives are unnecessary and lie outside the Commission's authority."[8] Generally, the balance of the Postal Service's discussion recounts the discovery dispute from Docket No. R2001–1, involving several of the services raised by CA's petition.[9] The Postal Service summarizes the procedural history and arguments that OCA and it advanced, concluding that the Presiding Officer's Ruling granting, in part, OCA's motion to compel was wrongly decided.[10]

The Postal Service did not address the specific rules suggested by CA and OCA, indicating that it would reserve its comments until and if a rulemaking were initiated.[11] More generally, it asserts that the "detailed information sought pertaining to specific nonpostal services is largely irrelevant and unnecessary for exercise of the Commission's functions in an omnibus rate case."[12] Moreover, it appears to suggest that requiring the filing of such information "would be unauthorized and could lead to a denial of due process."[13] Finally, the Postal Service contends that the proposed rule barring recovery of losses incurred by non-jurisdictional services from jurisdictional services "would be entirely unauthorized."[14]

Two commenters specifically endorsed the proposal by CA and OCA to initiate a rulemaking proceeding to establish reporting requirements concerning the Postal Service's non-jurisdictional activities. The Association for Postal Commerce (PostCom) states that the concept is not "revolutionary," noting that other agencies have developed "fairly elaborate accounting conventions" for industries subject to their jurisdiction.[15] Pitney Bowes, Inc. argues that regulatory oversight is needed to guard against the possibility that jurisdictional services will subsidize non-jurisdictional services. Accordingly, it urged the Commission to commence hearings to consider establishing cost accounting controls and reporting standards for nonpostal services.[16]

2. Rationale for the Rule

As a general matter, in rate proceedings nonpostal services have generated little controversy not only because the sums involved were relatively minor but also because few services were offered. Some entailed "public" services, such as the sale of U.S. savings bonds, sale of migratory bird stamps, and passport applications, performed by the Postal Service for other government agencies for which it is reimbursed.[17] Others involved minor services, offered as a convenience to postal patrons, such as photocopying, over which the Commission disclaimed jurisdiction.[18]

No longer are nonpostal services noncontroversial. The relatively recent proliferation of nonpostal "initiatives," ranging from various e-commerce services to prepaid phone cards to wireless communication towers on postal property, gives rise to the need to more closely consider their effects, if any, on jurisdictional rates. Not only has there been a sea change in the nature of

[1] PRC Order No. 1388, January 16, 2004.

[2] Letter, executed by CA and OCA, incorporated by reference in support of Consumer Action's petition, October 15, 2003, at 34–38 (Joint Letter).

[3] *Id.* at 35–36. The precedent cited includes PRC Order Nos. 1025 and 1034 in Docket No. R94–1 and Presiding Officer's Ruling No. R87–1/78 in Docket No. R87–1.

[4] *Id.* at 36–37.

[5] *Id.* at 38. Quoting testimony of Postal Service witness Panzar from Docket No. R97–1, they define the incremental cost test as follows: "The revenues collected from any service (or group of services) must be at least as large as the additional (or *incremental*) cost of adding that service (or group of services) to the enterprise's other offerings." *Ibid.* n.97 (emphasis in original).

[6] *Id.* at 39.

[7] Comments of United States Postal Service on Consumer Action Petition, January 30, 2003, at 38 (Postal Service Comments).

[8] *Id.* at 38–39.

[9] *Id.* 39–43.

[10] *Id.* at 44.

[11] *Ibid.*

[12] *Id.* at 45.

[13] *Ibid.*

[14] *Ibid.*

[15] Comments of PostCom, January 30, 2003, at 1.

[16] Comments of Pitney Bowes, Inc., April 18, 2003, at 6.

[17] For purposes of this discussion, it is unnecessary to dwell on any distinctions between nonpostal services provided to the public by the Postal Service on behalf of other federal agencies under section 404(a)(6) and those provided to other agencies pursuant to section 411 of the Act. As discussed below, the proposed rule is occasioned by the need to consider the rate effects of the Postal Service's introduction of new, commercial nonpostal ventures irrespective of the legal authority for them.

[18] PRC Op. R76–1, Vol. 2, App. F at 20.

the services provided, but there is also a growing concern that the costs associated with these services are largely being recovered through jurisdictional rates. In turn, this has led many to urge the need for greater transparency and accountability with respect to nonpostal services.

Historically, nonpostal services performed by the Postal Service fell within the rubric of "public service" costs. The Kappel Commission identified various subsidies under which the Post Office Department (POD) operated, including nonpostal services performed for other government agencies. "Unreimbursed non-postal services are some relatively small but widespread services rendered to other Government agencies (*e.g.*, providing space for Civil Service examinations)."[19] To eliminate this subsidy, the Kappel Commission advocated that the POD be reimbursed for all nonpostal services performed for other government agencies.[20] That policy appears to be practiced today. See, *e.g.*, Account 42341 (migratory bird stamps), Account 43420 (passport applications), and Account 42321 (food coupons).

Unlike these "public services," the spate of recent "nonpostal initiatives" has an entirely different hue. The services identified in Consumer Action's petition, and discussed in Order No. 1388, are in no sense "public services."[21] Rather, these represent commercial ventures, many of which, in competition with private industry, attempt to employ technological advances to grow revenues. Some of these services may ultimately be classified as "postal services." Others may not. *See* PRC Order No. 1389, January 16, 2004. For purposes of this rulemaking resolution of their status is immaterial. The Postal Service classifies them all as nonpostal and thus, at a minimum, they would be subject to any reporting requirements adopted in this proceeding. The Commission recognizes the unresolved dispute concerning the scope of the Postal Service's authority to engage in such nonpostal activities under the Act.[22] But again, resolution of that issue is of no moment to this rulemaking. Currently, the Postal Service *is* providing commercial, nonpostal services. Consequently, a need for the reporting requirements exists apart from the Postal Service's authority to offer the services. As the Commission has observed: "[t]he lawfulness of the independent actions by which the Postal Service implemented a service is simply not an issue before the Commission[.]"[23]

Concerns about the Postal Service's development of new products began to surface as early as 1998. In a report that year, the General Accounting Office (GAO) provided, among other things, financial data on 19 new products the Postal Service marketed and/or had under development during fiscal years 1995 through 1997.[24] Among the 19 new services are: FirstClass Phone Card, Sure Money, Liberty Cash, Unisite Antenna Program, REMITCO, and Electronic Commerce Services.[25] GAO reported that for fiscal years 1995 through 1997 these services lost an aggregate of $84.7 million, with only one product, Retail Merchandise, generating a profit ($5.0 million) during this period.[26]

Subsequent GAO reports, issued in 2000 and 2001, focused solely on the Postal Service's e-commerce activities. The first report, it is fair to say, was critical of the accuracy and completeness of the financial data the Postal Service provided concerning its various e-commerce initiatives.[27] As a consequence, GAO stated that it did:

> not believe the financial data that USPS provided could be used to reliably assess USPS' progress toward meeting its overall financial performance expectation that revenues generated by e-commerce products and services in the aggregate are to cover their direct and indirect costs as well as make a contribution to overhead.[28]

In an update to this report, issued in December 2001, GAO concluded that the financial information reported by the Postal Service concerning its e-commerce and Internet-related activities remained deficient, finding it "not complete, accurate, and consistent."[29] Aside from handcuffing management's ability to assess the financial performance of new service offerings, the lack of reliable data has important rate implications.

> Concerns continue to be raised as to whether USPS e-commerce initiatives in the aggregate are being cross-subsidized by other postal products and services. In response to our previous report, USPS officials noted that eCommerce products and services in the aggregate are to cover their incremental costs and thus not be cross-subsidized. To date, based on financial information provided to us, this goal has not been met, and it is not clear when this goal will be realized.[30]

In the intervening time since this report was issued, December 2001, perhaps the Postal Service has corrected the deficiencies in its financial reporting identified by GAO. While the Commission hopes that is the case, concerns about whether nonpostal services are being cross-subsidized by postal services and products remain legitimate. All stakeholders, including most notably ratepayers and competitors, have an interest in the performance of new nonpostal products and services offered by the Postal Service. Without accurate, complete, and consistent financial information regarding such services, there can be no assurance that no cross-subsidy exists.

Two more recent reports, which endorse the need for greater accountability by the Postal Service, provide support for this rulemaking.

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[19] *Towards Postal Excellence, The Report of the President's Commission on Postal Reorganization*, June 1968, at 137 (Kappel Commission Report); *see also id.*, Vol. 2 at 6–7 ("Loss on nonpostal services, mainly for other Government agencies (*e.g.*, sale of documentary stamps, provision of custodial service for building space occupied by other Government agencies));" and *id.* at 6–9 ("A first category of subsidized services is the nonpostal services performed for other government agencies ($25.4 million in FY 1967) and very minor amounts of government mail ($0.4 million in FY 1967))." (Footnote omitted.)

[20] Kappel Commission Report at 138. The Commission notes that the POD was "reimbursed for most such services." *Ibid.*

[21] The services identified in the petition include: Mall Package Shipment Program, Returns@Ease, Liberty Cash, Unisite Antenna Program, Retail Merchandise, NetPost CardStore, NetPost Certified Mail, USPS FirstClass Phone Card, Sure Money, USPS eBillPay, USPS Send Money, USPS Pay@Delivery, and USPS Electronic Postmark. For a description of these services, see PRC Order No. 1388, January 16, 2004, at 6–9. The petition also identified ePayments as a separate service. In its Report on Nonpostal Initiatives, March 10, 2003, the Postal Service indicated that ePayments has been superseded by Online Payment Services.

[22] CA and the OCA contend that the Postal Service's authority under section 404(a)(6) of the Act is limited to providing nonpostal services on behalf of other government agencies. Joint Letter at 25–26. The Postal Service argues that section 404(a)(6) authorizes it to provide commercial nonpostal services. In addition, it claims additional authority comes from its statutory mission and functions. Postal Service Comments at 13–17. For a discussion of this issue, see PRC Order No. 1388, January 16, 2004, at 15–21.

[23] PRC Order No. 1239, May 3 1999, at 13; *see also* PRC Order No. 1388, January 16, 2004, *at* 18–19.

[24] U.S. Postal Service, Development and Inventory of New Products, November 1998, Report No. GAO/GGD–99–15, at 3–4.

[25] *Id.* at 19; the figures are unaudited. Appendix III to the report contains a description of each service and summary of its financial results.

[26] *Id.* at 4, 19 and 20. For the first three quarters of FY 1998, the net loss narrowed to $3.7 million, with four of the remaining 13 active services reporting net profits.

[27] U.S. Postal Service, Postal Activities and Laws Related to Electronic Commerce, September 2000, Report No. GAO/GGD–00–188, at 4; see also id. at 27–30 (GAO Report GGD–00–195).

[28] *Id.* at 27. In emphasizing the need for reliable financial data, GAO specifically noted that expense data should include, among other things, expenses related to (a) information systems and (b) other infrastructure initiatives used to support the e-commerce services. *Id.* at 29.

[29] U.S. Postal Service, Update on E-Commerce Activities and Privacy Protections, December 2001, Report No. GAO–02–79, at 6–7; *see also id.* at 11–15 (GAO Report 02–79).

[30] *Id.* at 3; *see also id.* at 15–16.

First, the President's Commission on the Postal Service stated its belief that the Postal Service, as a public entity, "has a responsibility to the public to be transparent in its financial reporting." [31] In addition, the President's Commission discussed the need to safeguard against cross-subsidization.[32]

Second, based on audits in 2003, the Office of Inspector General (OIG) reports that the NetPost Services program, which consists of Mailing Online (now discontinued), CardStore, Premium Postcards, and Certified Mail, fell short of original financial projections.[33] In addressing the issue of accountability, the OIG states: "The Postal Service must also continue to improve its financial operations to ensure it is accountable to the public and is providing the best service at the lowest cost." [34]

Finally, various stakeholders question whether the Postal Service should be engaged in nonpostal initiatives in competition with private industry.[35] While that policy issue is beyond the scope of this rulemaking, it highlights the need for reporting requirements that may aid in evaluating complaints that the Postal Service is competing unfairly. Of late, much has been written about the need for greater financial transparency by the Postal Service in general and, more specifically, regarding its nonpostal activities.[36] It is imperative that, to the extent of its authority to offer commercial nonpostal services in competition with private industry, the Postal Service, as a government-owned and -operated monopoly, price such services in a manner that, based on publicly available data, provides demonstrable assurance that it is not competing unfairly.

3. Legal Authority

Section 3603 specifically authorizes the Commission to "promulgate rules and regulations and establish procedures, subject to chapters 5 and 7 of title 5, and take any other action they deem necessary and proper to carry out their functions * * *." 39 U.S.C. 3603. The Commission has concluded that it is "necessary and proper to carry out [its] functions" to amend its rules to ensure that the Postal Service's burgeoning nonpostal service activities are not being cross-subsidized by jurisdictional services.

The need for an accurate accounting of the Postal Service's "postal" and "nonpostal" activities is indisputably relevant to the Commission's authority to recommend rates for jurisdictional (postal) services. Section 3621 mandates that the Postal Service operate under a break-even requirement, *i.e.*, revenues from postal rates and fees must equal as nearly practicable the Postal Service's total estimated costs. 39 U.S.C. 3621. Section 3622(b)(3) requires that each class or type of mail bear the direct and indirect postal costs attributable to it plus a reasonably assignable portion of the Postal Service's other costs. In addition, section 403(c) prohibits both undue discrimination among users and any undue preference for any user.

To recommend rates that satisfy the Act, the Commission must have accurate cost and revenue information regarding both jurisdictional (domestic postal) services and non-jurisdictional (nonpostal and international) services. Without such information, the Commission cannot reasonably determine the net revenue to be generated by jurisdictional services that would enable the Postal Service to achieve a financial break-even result. Nor, without reliable estimates of the Postal Service's non-jurisdictional revenues and expenses, can the Commission ensure, under section 3622(b)(3), that costs properly attributable to non-jurisdictional services are not reflected in rates for jurisdictional services. Such data are "necessary and proper" for the Commission to recommend rates for jurisdictional services that are fair and equitable and free from cross-subsidies.

The Postal Service has recognized these principles, acknowledging that non-jurisdictional costs and revenues (concerning international mail services) are prerequisites to determine revenues from jurisdictional services.[37] In addition, it has observed that nonpostal services must cover their costs, lest costs be unfairly shifted to users of other services.[38] Apparently to preclude this, the Postal Service stated that "it must seek to price its nonpostal services in a fair and reasonable way, including coverage of their attributable costs plus a reasonable contribution to overhead." [39]

The proposed rule does not represent a wholesale restructuring of the Commission's filing requirements. The Commission's Rules have long required the Postal Service to separate costs between postal and nonpostal services.[40] Briefly, the proposed amendments to rule 54 would require the Postal Service to identify each nonpostal service (rule 54(h)(1)(i)(*a*)), provide the total annual direct and indirect costs accrued in providing the service (rule 54(h)(1)(i)(*b*)), and provide the total annual revenues earned by the Postal Service in providing the service (rule 54(h)(1)(i)(*c*)). The proposed rule also encompasses those nonpostal services and products that are based on a strategic alliance or contract between the Postal Service and one or more parties. Rule 54(h)(1)(ii).

Concerning the scope of the proposed rule, two clarifying comments may be useful. First, while the proposed rule uses the term "nonpostal service" it is intended to encompass all of the Postal Service's commercial nonpostal activities, whether deemed a service, a product, or otherwise styled differently. Second, the proposed rule requires that the costs associated with any service that has been terminated or discontinued be reported. Regarding the phrase "terminated or discontinued," the intent of the rule is for the Postal Service to report the costs of every nonpostal service which it has ceased to offer whether temporarily or permanently, including reconstituting the service in a revised form.[41]

The proposed rule is designed primarily to provide sufficient information regarding the Postal

[31] Report of the President's Commission on the United States Postal Service, July 31, 2003, at 66.

[32] *Id.* at 67.

[33] Office of Inspector General, Semiannual Report to Congress, April 1, 2003–September 30, 2003, at 26.

[34] *Id.* at 8.

[35] *See, e.g.*, Comments of Pitney Bowes, Inc., April 18, 2003, Comments of the Computer & Communications Industry Association on the Motion of the Office of the Consumer Advocate to Request that the Commission Institute a Proceeding to Consider the Postal/Nonpostal Character of Specified Services and the Establishment of Rules to Require a Full Accounting of the Costs and Revenues of Nonpostal Services, January 28, 2003; and Comments of the Council for Citizens Against Government Waste on the Motion of the Office of the Consumer Advocate to Request that the Commission Institute a Proceeding to Consider the Postal/Nonpostal Character of Specified Services and the Establishment of Rules to Require a Full Accounting of the Costs and Revenues of Nonpostal Services, January 30, 2003.

[36] In addition to the various reports cited above, see also Letter to The Honorable Daniel K. Akaka, Chairman, and The Honorable Thad Cochran, Ranking Minority Member, Subcommittee on International Security, Proliferation, and Federal Services Committee on Governmental Affairs from the General Accounting Office by Bernard L. Ungar, Director, Physical Infrastructure Issues and Linda Calbom, Director, Financial Management and Assurance, November 13, 2002.

[37] PRC Op. R94–1, November 30, 1994, para. 1085.

[38] GAO Report GGD–00–188, *supra*, at 46.

[39] *Ibid.*

[40] *See, e.g.*, rule 54(h) promulgated March 22, 1972. 38 FR 7528.

[41] To be sure, a distinction may be drawn between terminate and discontinue even if both may be defined as "to put an end to." Webster's Encyclopedic Unabridged Dictionary of the English Language, 1989. In that regard, the Commission notes that in its Report on Nonpostal Initiatives, March 10, 2003, the Postal Service described the status of its Mall Package Shipment Program as "discontinued" (at 5), whereas it described that program as "terminated" in its Update to Report on Nonpostal Initiatives, November 14, 2003.

Service's nonpostal services and products to determine the presence (or absence) of cross-subsidies. The data are needed so that the Commission can recommend rates for jurisdictional services that comport with the requirements of the Act. It may be recalled that the Postal Service contended that the purpose of the specific amendments suggested by CA and OCA was to provide, among other things, information "to enable [the Commission] to critique the specific rates and fees established by the Postal Service for each nonpostal service."[42] In this context, the meaning of the term "critique" is unclear. Nonetheless, any concern the Postal Service may have about Commission review of its pricing of nonpostal services would be unfounded. The proposed rule does not require information about specific rates or rate design. Nor is the proposed rule intended as a means to set prices for nonpostal services or otherwise encumber management's legal authority to offer such services. This is not to suggest, however, that the Commission will eschew examining the performance of individual nonpostal services for purposes of considering claims of unfair competition.

To test for cross-subsidies, CA and OCA suggest that the Commission employ an incremental cost test, one endorsed by the Postal Service in rate proceedings, as follows: "The revenues collected from any service (or group of services) must be at least as large as the additional (or *incremental*) cost of adding that service (or group of services) to the enterprise's other offerings."[43] In Docket No. R97–1, the Commission accepted that description of the test,[44] and furthermore, in Docket No. R2000–1, indicated that it "remains interested in continuing the development of the incremental cost test to the point that it can be applied to reliably identify cross subsidies in proposed rates."[45] To the extent that nonpostal service incremental costs can be calculated, the incremental cost test would be an appropriate vehicle for testing the existence of cross-subsidies. In that regard, it would appear that the Postal Service believes that such costs can be calculated since, as noted below, it suggests the need for e-commerce services in the aggregate to cover their incremental costs to avoid being cross-subsidized.

With respect to its nonpostal initiatives, the Postal Service has recognized that "complete and accurate cost, revenue and performance data [must] be tracked and periodically reported to senior management."[46] Consequently, any burden imposed on the Postal Service by the proposed rule would appear to be minimal. Moreover, the type of data the proposed rule is designed to yield is necessary to test for cross-subsidies, a standard the Postal Service appears to recognize as appropriate. For example, regarding its e-commerce services, the Postal Service has indicated that it will:

> ensure that in the aggregate, the revenues generated by such products and services will cover their direct and indirect costs as well as make a contribution to overhead. Further, eCommerce products and services in the aggregate are to cover their incremental costs and thus not be cross-subsidized. Also, it is intended that each eCommerce product and service should cover its costs. [47]

In conclusion, by statute the Postal Service, a public entity, is to be operated as a basic and fundamental service for the public. 39 U.S.C. 101(a). The public interest is not served if rates and fees for postal services are saddled with costs properly related to nonpostal services. Various stakeholders have expressed legitimate concerns regarding the nature and performance of the Postal Service's nonpostal activities. There is a demonstrable need for complete and accurate financial data regarding the Postal Service's nonpostal services and products to ensure that rates recommended by the Commission are free from cross-subsidies. In sum, the proposed rule, which provides for greater accountability and transparency regarding the Postal Service's nonpostal activities, is necessary and proper for the Commission to fulfill its ratemaking responsibility under the Act. The amendments to the Code of Federal Regulations proposed in this rulemaking are set forth following the ordering paragraphs herein.

4. Procedural Matters

*Comments.* By this order, the Commission hereby gives notice that comments from interested persons concerning the proposed amendments to the Commission's rules are due on or before April 15, 2004. Reply comments may also be filed and are due May 17, 2004.

*Representation of the general public.* In conformance with section 3624(a) of title 39, the Commission designates Shelley S. Dreifuss, director of the Commission's Office of the Consumer Advocate, to represent the interests of the general public in this proceeding. Pursuant to this designation, Ms. Dreifuss will direct the activities of Commission personnel assigned to assist her and, upon request, will supply their names for the record. Neither Ms. Dreifuss nor any of the assigned personnel will participate in or provide advice on any Commission decision in this proceeding.

*It is ordered:*

1. Interested persons may submit initial comments by no later than April 15, 2004. Reply comments may also be filed and are due no later than May 17, 2004.

2. Shelley S. Dreifuss, Director of the Office of the Consumer Advocate, is designated to represent the interests of the general public.

3. The Secretary shall arrange for publication of this Proposed Rulemaking in the **Federal Register**.

Issued: March 5, 2004.

By the Commission.

**Steven W. Williams,**

*Secretary.*

**List of Subjects in 39 CFR Part 3001**

Administrative Practice and Procedure, Postal Service.

For the reasons discussed above, the Commission proposes to amend 39 CFR part 3001 as follows:

## PART 3001—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 3001 continues to read as follows:

**Authority:** 39 U.S.C. 404(b); 3603; 3622–24; 3661, 3662, 3663.

### Subpart B—Rules Applicable to Requests for Changes in Rates or Fees

2. Amend § 3001.54 as follows:

a. Remove paragraph (b)(4).

b. Add new paragraphs (h)(1)(i) and (ii) to read as follows:

**§ 3001.54 Contents of formal requests.**

* * * * *

[42] Postal Service Comments at 38–39.

[43] Joint Letter at 38, n.97 (emphasis in original), citing Direct Testimony of John C. Panzar on Behalf of the United States Postal Service, Docket No. R97–1, Exh. USPS 11 at 8.

[44] PRC Op. R97–1, para. 4026.

[45] PRC Op. R2000–1, para. 4054.

[46] Letter from Mr. John M. Nolan, Deputy Postmaster General, to Mr. Bernard L. Ungar, Director, Government Business Operations Issues, August 29, 2000, GAO Report GGD–00–188, *supra*, at 74.

[47] GAO Report GGD–00–188, supra, at 46. In its comments to the GAO, the Postal Service recognizes the principle that nonpostal services must cover their costs, lest costs be unfairly shifted to users of other services. It states that it should price such services "in a fair and reasonable way, including coverage of their attributable costs plus a reasonable contribution to overhead." *Ibid.* It is unclear what, if any, distinction the Postal Service intended between the costs related to nonpostal services and those related to eCommerce products and services.

(h) *Separation, attribution, and assignment of certain costs.* (1) * * * (i) With respect to each nonpostal service provided by the Postal Service for the fiscal years specified in paragraph (f) of this section, the Postal Service shall provide:

*(a)* An identification and reasonably thorough description of the service, including any service terminated or discontinued during the relevant fiscal years;

*(b)* The total, annual, accrued direct and indirect costs, separately identified, to provide the service, including, but not limited to, development costs, start-up costs, capital costs, common and joint costs, and costs associated with each service that has been terminated or discontinued.

*(c)* The total annual revenues earned by the Postal Service in providing the service.

*(ii)* Nonpostal services referred to in paragraph (h)(1)(i) of this section include those based on a strategic alliance or contract between the Postal Service and one or more parties.

* * * * *

[FR Doc. 04–5399 Filed 3–9–04; 8:45 am]
BILLING CODE 7710–FW–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 82

**[FRL–7633–1]**

## Protection of Stratospheric Ozone: Notice of Data Availability; New Information Concerning SNAP Program Proposal on HCFC–141b Use in Foams

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

**ACTION:** Notice of data availability and request for comment.

**SUMMARY:** The Environmental Protection Agency is making available to the public information related to a July 11, 2000 proposed rule under the Significant New Alternatives Policy (SNAP) Program under section 612 of the Clean Air Act. The SNAP program reviews alternatives to Class I and Class II ozone depleting substances and approves use of alternatives which reduce the overall risk to public health and the environment. The July 11, 2000 proposed rule concerned use of several hydrochlorofluorocarbons (HCFCs) in foam blowing applications. On July 22, 2002, EPA took final action with respect to a number of the HCFCs, but deferred its decision on the use of HCFC–141b in foam blowing applications due to the pending production and import ban of HCFC–141b (January 1, 2003) and incomplete information regarding the technical viability of alternatives. Since that publication, EPA received information from outside parties through letters, meetings, and the HCFC–141b Exemption Allowance Petition process (68 FR 2819) that addresses the use of HCFC–141b in foam blowing applications. Today, the Agency is making available for public review and comment information on alternatives to HCFC–141b currently used in each sector, and on the import of pre-blended HCFC–141b polyurethane systems. We plan to consider this information and any comment received during the comment period in determining what future action to take on our July 11, 2000 proposal regarding the use of HCFC–141b in foam blowing applications.

We are not soliciting comments on any other topic. In particular, we are not soliciting comments on the final SNAP foam rule published on July 22, 2002 (67 FR 47703) or the final HCFC allowance allocation rule, including the HCFC–141b exemption allowance petition process published on January 21, 2003 (68 FR 2819).

**DATES:** We will accept comments on the new data through April 9, 2004.

**ADDRESSES:** Comments may also be submitted electronically, by facsimile, or through hand delivery/courier. Follow the detailed instructions as provided at the beginning of the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** For further information about this notice, contact Suzie Kocchi by telephone at (202) 343–9387, or by e-mail at *kocchi.suzanne@epa.gov*. Overnight or courier deliveries should be sent to the office location at 1310 L Street, NW, Washington, DC 20005. Notices and rulemakings under the SNAP program are available on the Internet at *http://www.epa.gov/ozone/snap/regs*.

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**



### I. General Information

*A. How Can I Get Copies of Related Information?*

1. Docket

EPA has established an official public docket for this action under Docket ID No. OAR–2003–0228 (continuation of Docket A–2000–18). The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Hard copies of documents from prior to the public comment period are found under Docket ID No. A–2000–18. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Air and Radiation Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1742, and the telephone number for the Air and Radiation Docket is (202) 566–1742.

2. Electronic Access

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket

materials through the docket facility identified in section I.B.1. above.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

*B. How and to Whom Do I Submit Comments?*

You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in section I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select "Information Sources," "Dockets," and "EPA Dockets." Once in the system, select "search," and then key in Docket ID No. OAR–2003–0228. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

Comments may be sent by electronic mail (e-mail) to *A-And-R-Docket@epa.gov,* Attention Docket ID No. OAR–2003–0228. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

You may submit comments on a disk or CD ROM that you mail to the mailing address identified in section I.B.1. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send two copies of your comments to: Air and Radiation Docket, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. OAR–2003–0228.

3. *By Hand Delivery or Courier.* Deliver your comments to: EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW, Washington, DC., Attention Docket ID No. OAR–2003–?. Such deliveries are only accepted during the Docket's normal hours of operation as identified in section I.B.1.

4. *By Facsimile.* Fax your comments to: 202–566–1741, Attention Docket ID. No. OAR–2003–0228.

*C. How Should I Submit CBI to the Agency?*

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. Send or deliver information identified as CBI only to the following address: Suzie Kocchi, U.S. EPA, 8th floor, 1310 L Street NW, Washington DC 20005 via overnight delivery service. Attention Docket ID No. OAR–2003–0228. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

## II. What Is Today's Action?

Today, we are making information available on foam blowing applications that could be potentially affected by a Significant New Alternatives Policy (SNAP) action under section 612 of the Clean Air Act. The proposed action, published in the **Federal Register** on July 11, 2000 (65 FR 42653) addressed use of various HCFCs in foam end-uses. Part of that proposed rule was a proposal to list HCFC–141b as unacceptable in all foam end-uses, with existing users grandfathered until January 1, 2005 (65 FR 42653). The Agency allowed 60 days for public comment and received 45 responses to the proposal by the close of the comment period (September 11, 2000). The Agency received comments from

chemical manufacturers, appliance manufacturers, spray foam manufacturers, associations, and others. Copies can be obtained through the Air Docket by referencing A–2000–18, IV–D–1 through 45 (see **ADDRESSES** section above for docket contact info). On July 22, 2002 (67 FR 47703), EPA took final action on other aspects of the July 11, 2000 proposed rule but deferred final action on the proposal to list HCFC–141b as unacceptable.

Since the publication of the final rule when EPA deferred the decision on the use of HCFC–141b in foam blowing applications, the Agency has acquired additional information pertaining to the availability and technical viability of alternatives and the import of pre-blended HCFC–141b polyurethane systems. This information was obtained through meetings held at the request of industry representatives, letters sent directly to the Agency and information presented through the HCFC–141b exemption allowance petition process. The purpose of making data available for comment is to ensure that information provided to the Agency since the publication of the final rule (July 22, 2002) is accurate and complete. We plan to consider this information and any comment received on these data during the comment period in determining what future action to take on our July 11, 2000 proposal regarding the use of HCFC–141b in foam blowing applications.

## III. What Information Is EPA Making Available for Review and Comment?

Since the publication of the final rule, EPA has received 7 additional comments in response to its July 2000 proposal on HCFC–141b. These comment letters can be obtained through the Air Docket, OAR–2003–0228 reference numbers 2–8. The letters address the technical viability and availability of alternatives of HCFC–141b and the import of pre-blended HCFC–141b polyurethane systems.

Additional information was submitted to EPA through the 2003 and 2004 HCFC–141b exemption allowance petition processes. Formulators of HCFC–141b are eligible to submit petitions to EPA requesting that they be allowed to obtain new production of HCFC–141b beyond the phaseout date of January 1, 2003. The petitions include information on the availability of stockpiled HCFC–141b, the technical constraints justifying the continued use of HCFC–141b, and the research and development of alternatives as well as the other information required by 40 CFR 82.16(h). Although the submitters of each individual petition has claimed the information in its petition as confidential business information, the Agency is including a memo summarizing the aggregate findings from the petition processes, without any reference to specific companies, products or any other information considered to be confidential. The Agency is considering the use of some of this information for the purposes of taking final action on the proposal. This document can be obtained through the Air Docket, OAR–2003–0228 reference number 9.

The Agency is seeking comments on the accuracy and thoroughness of the information described above, specifically:

—Overview of technical viability of alternatives to HCFC–141b

(a) Comments from the polyurethane spray foam industry and contractors

(b) Comments from the polyurethane systems houses

(c) Comments from the polyurethane foam blowing agent suppliers

—Memo on the import of pre-blended polyurethane foam systems containing HCFC–141b

EPA has also provided an updated table of the transition from HCFCs to alternatives for all foam applications, available through Air Docket, OAR–2003–0228 reference number 10. EPA is soliciting comment on the accuracy of the information presented in the table. In addition to obtaining comments on the accuracy of the information provided, the Agency would like to know if there are other foam applications in which HCFC–141b is still used as a blowing agent not listed in the table.

## IV. Where Can I Get the Data Being Made Available for Comment?

All of the data in which we are seeking comment can be obtained through the Air Docket (see **SUPPLEMENTAL INFORMATION** section above for docket contact info). Reference numbers are as follows:

—Overview of technical viability of alternatives to HCFC–141b

(a) Comments from the polyurethane spray foam industry and contractors Air Docket, OAR–2003–0228 reference numbers 2 and 6

(b) Comments from the polyurethane systems houses Air Docket, OAR–2003–0228 reference numbers 3 and 4

(c) Comments from the polyurethane foam blowing agent suppliers Air Docket, OAR–2003–0228 reference numbers 5 and 7

—Memo on the import of pre-blended polyurethane foam systems containing HCFC–141b Air Docket, OAR–2003–0228 reference number 8

—Synopsis of information gathered in the HCFC–141b Exemption Allowance Process Air Docket, OAR–2003–0228 reference number 9

—Table summarizing the transition status from HCFCs to alternatives by application Air Docket, OAR–2003–0228 reference number 10

## V. Why Is EPA Making This Data Available?

We are soliciting comment on this new information to ensure that we use the best information available when we determine how to proceed on our July 11, 2000 proposal to list HCFC–141b as unacceptable. Because the information on which we are seeking comment will be considered by EPA in determining how to proceed on our proposal regarding the use of HCFC–141b in foam blowing applications, the Agency is providing the public with an opportunity to comment on the quality of the available information. This information will be used to ensure that issues relating to the technical viability of alternatives and industry impacts are fully considered by EPA prior to moving forward with a rulemaking in the foams sector.

## VI. What Is EPA Not Taking Comment On?

EPA is only accepting comments on accuracy and completeness of the information outlined in today's **Federal Register** notice. EPA is *not* accepting comment on the following:

—HCFC foam final rule published on July 22, 2002 (67 FR 47703)

—HCFC final Allowance System for Controlling HCFC Production, Import and Export rule published on January 21, 2003 (68 FR 2819)

—HCFC–141b Exemption Allowance petition process established by the HCFC final Allowance System for Controlling HCFC Production, Import and Export rule published on January 21, 2003 (68 FR 2819)

## VII. What Supporting Documentation Do I Need To Include in My Comments?

Please provide any published studies or raw data supporting your position.

Dated: February 23, 2004.

**Brian McLean,**

*Director, Office of Atmospheric Programs, Office of Air and Radiation.*

[FR Doc. 04–5285 Filed 3–9–04; 8:45 am]

BILLING CODE 6560–50–P

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 660**

**[I.D. 030104B]**

## Western Pacific Fishery Management Council; Public Meetings

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meetings and hearings.

**SUMMARY:** The Western Pacific Fishery Management Council (Council) will hold its 122nd meeting to consider and take actions on fishery management issues in the Western Pacific Region.

**DATES:** The meetings and public hearings will be held on March 22, March 23, 24, and 25, 2004. For specific times, see **SUPPLEMENTARY INFORMATION.**

**ADDRESSES:** All meetings and public hearings will be held at Hawaii Convention Center, Kalakaua Avenue, Honolulu, Hawaii, 96814; telephone (808)943–3500.

**FOR FURTHER INFORMATION CONTACT:** Kitty M. Simonds, Executive Director; telephone: (808)522–8220.

**SUPPLEMENTARY INFORMATION:** In addition to the agenda items listed below, the Council will hear recommendations from its Scientific and Statistical Committee, and other ad hoc groups. Public comment periods will be provided throughout the agenda. The order in which agenda items are addressed may change. The Council will meet as late as necessary to complete scheduled business.

### Schedule and Agenda for Council Standing Committee Meetings

*Monday, March 22, 2004*

1. 7:30 a.m. to 9 a.m. Enforcement/ Vessel Monitoring System (VMS)

2. 7:30 a.m. to 9 a.m. Fishery rights of indigenous people

3. 9 a.m. to 12 noon. International fisheries/pelagics

4. 9 a.m. to 12 noon. Bottomfish

5. 1:30 p.m. to 3 p.m. Ecosystem and habitat

6. 3 p.m. to 4:30 p.m. Crustaceans and precious corals

7. 4:30 p.m. to 6 p.m. Executive/ budget and program

### Schedule and Agenda for Public Hearings

*Tuesday, March 23, 2004*

11:45 a.m. Proposed regulatory amendment (final action) to Western Pacific Fishery Management Plans to allow fishermen the option of using NMFS approved electronic logbooks instead of paper logbooks.

*Wednesday March 24, 2004*

11:45 a.m. Initial action on a regulatory amendment to implement additional measures to conserve sea turtles and initial action to amend the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (Pelagics FMP) to revise the requirements for seabird mitigation when fishing north of 23° N' lat. to include side setting as an alternative to one or more of the current suite of seabird mitigation measures.

*Thursday, March 25, 2004*

11:00 a.m. Preliminary options to manage the bottomfish fishery around the Commonwealth of the Northern Mariana Islands (CNMI). The agenda during the full Council meeting will include the items listed here.

For more information on public hearing items, see Background Information.

### Schedule and Agenda for Council Meeting

*Tuesday, March 23, 2004*

9:00 a.m. and continue until business is completed.

1. Introductions
2. Approval of agenda
3. Approval of 119th, 120th, and 121st Meeting Minutes
4. Island reports of American Samoa, Guam, Hawaii and the CNMI
5. Reports from fishery agencies and organizations
   A. Department of Commerce
   a. NMFS
   i. Pacific Islands Regional Office
   ii. Pacific Islands Fisheries Science Center
   b. NOAA General Counsel Southwest Region
   c. National Ocean Service
   B. Department of Interior - Fish and Wildlife Service (USFWS)
   C. U.S. State Department
6. Enforcement/VMS
   A. U.S. Coast Guard activities
   B. NMFS activities
   C. Enforcement activities of local agencies
   D. Status of violations
   E. National VMS program and policies
   F. Electronic logbook amendment
7. Observer programs
   A. Report on Northwestern Hawaiian Island (NWHI) Bottomfish program
   B. Report on native observer program
8. Precious coral fisheries
   A. Report on new beds in the NWHI
   B. Additional research on Carijoa riisei
9. Crustacean fisheries
   A. Status of lobster research: Update on Multi-FAN CL lobster model
10. Fishery rights of indigenous peoples
   A. Community demonstration projects program (2nd solicitation)
   B. Guam community monitoring program
   C. Fishing knowledge education program

*Tuesday, March, 23 2004*

6:30 to 9:00 p.m. Fishers forum:

1) Federal fishery data collection requirements for Hawaii coral reef and bottomfish fisheries.

2) Solicitation of public comments on strategic plan for the Pacific Islands/ Western Pacific Region.

*Wednesday, March 24, 2004*

8:30 a.m. and continue until business is completed.

11. Pelagics/international fisheries
   A. American Samoa and Hawaii longline quarterly reports
   a. Quarterly reports
   b. Southern albacore catch per unit effort in 2003
   B. Turtle management
   a. Regulatory amendment to implement new technologies for the Pelagics FMP (including an SEIS)
   b. Regulatory amendment to implement additional measures to conserve sea turtles (Action Item)
   c. Post-hooking mortality workshop
   d. Risk assessment seminar
   e. New Biological Opinion on pelagic fisheries
   f. Progress on turtle conservation projects
   C. Discussion of squid and seabird SEIS
   D. Seabird conservation
   a. Consideration of side-setting as an option (Action Item)
   E. Marlin management
   F. Private fish aggregation devices
   G. Shark management
   H. Marine mammal management
   I. International meetings
   a. Bellagio Conference: Conservation and Sustainable Multilateral Management of Sea Turtles in the Pacific Ocean
   b. 4th Interim Scientific Committee meeting
   c. Inter-American Tropical Tuna Commission 4th Bycatch Working Group

d. Asia Region Seabird Bycatch Workshop
e. 24th Sea Turtle Symposium
f. Indian Ocean South East Asia Sea Turtle Conference

*Thursday, March 25, 2004*

8:30 a.m. and continue until business is completed.
12. Ecosystems and habitat
A. Report on the Coral Reef Fish Stock Assessment Workshop
B. NWHI sanctuary alternatives: rationale and criteria
C. Review of Council Marine Protected Area Policy
D. National Bycatch Implementation Plan
13. Bottomfish fisheries
A. Report on international deep-slope fishery workshop
B. Seamount groundfish moratorium (expires 8/04)
C. Report on Hawaii Undersea Research Laboratory project
D. Bottomfish Stock Assessment Workshop recommendations
E. Preliminary CNMI bottomfish management options (Action Item)
14. Program planning
A. Regulatory streamlining
B. Archipelago ecosystem-based management
C. Programmatic Environmental Impact Statement
D. Legislation
E. Pacific Islands/Western Pacific Strategic Plan
F. Programmatic grants report
G. Council Chairs' and Executive Director's meeting
H. Status of Hawaii $5 million disaster funds for Federal fisheries
I. Annual report
J. Federal fishery data collection
K. WPacFIN
15. Administrative matters
A. Financial reports
B. Administrative report
C. Meetings and workshops
D. Advisory group changes
16. Other Business

**Background Information**

1. Public Hearing on electronic logbook amendment (Action Item)

The Council will consider final action on a proposed regulatory amendment to Western Pacific Fishery Management Plans that would allow fishermen the option of using NMFS approved electronic logbook books instead of the Federal paper logbook forms that are now required. In its initial action, the Council recognized that the availability and capability of personal computers has increased to the point where using them to record fisheries dependent information can benefit Western Pacific fishery participants and NMFS. The benefits of electronic logbook forms include significant time savings for fishery participants, increased data accuracy, and time and money savings for NMFS.

The alternatives considered in the draft regulatory amendment range from maintaining the current regulations, to requiring the use electronic logbook forms and requiring their transmission via e-mail or satellite systems. In recognition of the fact that not all fishery participants may have technology or desire to use electronic logbooks, the preferred alternative would amend the five Fishery Management Plans of the Western Pacific to allow the optional use of electronic logbook forms, and the submission of such forms on non-paper media or transmitted via e-mail or satellite systems. This option would be available to current participants in those fisheries with Federal reporting requirements (meaning fisheries in which participants submit Federal logbooks directly to NMFS) as well as those future participants in fisheries that may become subject to Federal reporting.

2. Regulatory amendment to implement additional measures to conserve sea turtles (Action Item)

At its 121st meeting, the Council took action on long term measures to implement new technology to reduce and mitigate turtle-longline interactions in the Hawaii longline fishery. The Council took final action to recommend management measure to re-establish a limited (2,120 sets annually) Hawaii-based shallow-set fishery using new technologies (circle hooks, mackerel-type bait, and dehookers) to reduce and mitigate sea turtle interactions. However, several additional issues remain unresolved and will be considered by the Council at this meeting. These issues arise out of the fact that a recent Court order will vacate the existing sea turtle conservation regulations effective April 1, 2004. It is anticipated that the Council's recommended management regime for the Hawaii-based fishery will be implemented on that date, however existing measures for other fisheries will not be replaced without further Council action. These include: (1) A requirement that operators of general longline vessels annually attend protected species workshops and carry workshop completion certificates with them when fishing; (2) a requirement that operators of general longline vessels carry and use dip nets, line clippers, and bolt cutters (longline vessels with less than 3' freeboard such as alias would not have to carry dip nets or long handled line clippers) to release hooked or entangled sea turtles; (3) a requirement that vessels registered to general longline permits do not shallow-set north of the equator. The Council will also consider whether the current turtle handling requirements for operators of non-longline vessels using hooks to fish for pelagic species in EEZ waters should be supplemented with a requirement to remove trailing gear from hooked or entangled sea turtles. The Council may consider taking initial action at this meeting to amend the Pelagics FMP to include some or all of these additional measures.

3. Consideration of side-setting as an option (Action Item)

In November 2000, the USFWS issued a biological opinion (BiOp) which contained reasonable and prudent measures for minimizing interactions with albatross populations which nest in the NWHI. The BiOp recognized that the Hawaii-based longline fishery at that time comprised two segments, namely a deep-setting tuna-targeting segment, and a shallow-setting swordfish targeting segment. All longline vessels fishing above 23° N' lat. were required to use thawed blue dyed bait and employ strategic offal discards when setting and hauling the longline. Vessels setting deep to catch tuna were also required to use a line setting machine with weighted branch lines. Vessels setting shallow to target swordfish were required to begin setting the longline at least 1 hour after local sunset and complete the setting process by local sunrise, using only the minimum vessel lights necessary. The Council amended the Pelagics FMP to require these measures and a final rule was published in May 2002. However, the final rule did not include a requirement for night setting due to an earlier closure of the swordfish segment of the Hawaii-based fishery in early 2001, under separate rule making in compliance with a March, 2001, BiOp issued by NMFS regarding sea turtles. The Council recently completed an amendment to the Pelagics FMP which will re-open the swordfish-targeting segment of the Hawaii longline fishery by April 2004, which includes the night setting requirement. During 2002 and 2003, additional seabird mitigation research field tests were conducted with underwater setting chutes, blue dyed bait and side setting. Side setting, as the term implies, means setting the longline from the side, rather than from the stern of the vessel. While all measures

worked well, side setting was the only method which virtually reduced the interaction rate between longline and seabirds to zero. However, side setting is not included within the suite of measures required in the USFWS BiOp, nor in the regulations for the Hawaii-based fishery. The Council may therefore consider taking initial action at this meeting to amend the Pelagics FMP to revise the requirements for seabird mitigation when fishing north of 23° N' lat. to allow side setting as an alternative to one or more of the current suite of seabird mitigation measure requirements.

4. Preliminary CNMI bottomfish management options (Action Item)

A public hearing will be held on preliminary options to manage the bottomfish fishery around the CNMI. Based on comments received during public scoping meetings held in CNMI, the Council developed preliminary options including limiting the harvest of bottomfish, reporting requirements, establishing area closures, gear and vessel restrictions, and other control measures as suggested by persons during the scoping meetings. At its 122nd meeting, the Council may take initial action to support a range of alternatives, including selection of a preliminary preferred alternative, to be considered in an amendment to be drafted by Council staff.

Although non-emergency issues not contained in this agenda may come before the Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this document and any issue arising after publication of this document that requires emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

**Special Accommodations**

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808)522–8220 (voice) or (808)522–8226 (fax), at least 5 days prior to the meeting date.

**Authority:** 1801 *et seq.*

Dated: March 4, 2004.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 04–5291 Filed 3–9–04; 8:45 am]

BILLING CODE 3510–22–S

# Notices

Federal Register
Vol. 69, No. 47
Wednesday, March 10, 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 HEALTH AND HUMAN SERVICES

## DEPARTMENT OF AGRICULTURE

### Announcement of Meeting of 2005 Dietary Guidelines Advisory Committee and Solicitation of Written Comments

**AGENCIES:** U.S. Department of Health and Human Services (HHS), Office of Public Health and Science; and U.S. Department of Agriculture (USDA), Food, Nutrition and Consumer Services and Research, Education and Economics.

**ACTION:** Notice.

**SUMMARY:** The U.S. Department of Health and Human Services and the U.S. Department of Agriculture (a) provide notice of the third meeting of the Committee and (b) solicit written comments.

**DATES:** (1) The Committee will meet on March 30 and 31, 2004, 8:30 a.m. to 5:30 p.m. on both days. (2) Written comments on the Dietary Guidelines must be received by 5 p.m. e.s.t. on March 19, 2004, to ensure transmittal to the Committee prior to this meeting.

**ADDRESS:** The meeting will be held at the Holiday Inn Georgetown, located at 2101 Wisconsin Ave., NW., Washington, DC, in the Mirage Ballroom. The closest metro station to the meeting location is the Foggy Bottom station. Holiday Inn Georgetown shuttle service will be provided between the Foggy Bottom metro station and the hotel. Limited parking is available at the hotel.

**FOR FURTHER INFORMATION CONTACT:** HHS Co-Executive Secretaries: Kathryn McMurry or Karyl Thomas Rattay (phone 202–690–7102), HHS Office of Disease Prevention and Health Promotion, Office of Public Health and Science, Room 738-G, 200 Independence Ave., SW., Washington, DC 20201. USDA Co-Executive Secretaries: Carole Davis (phone 703–305–7600), USDA Center for Nutrition Policy and Promotion, 3101 Park Center Drive, Room 1034, Alexandria, Virginia 22302, or Pamela Pehrsson (phone 301–504–0716), USDA Agricultural Research Service, Beltsville Agricultural Research Center-West, Building 005, Room 309A, Beltsville, Maryland 20705. Additional information is available on the Internet at www.health.gov/dietaryguidelines.

**SUPPLEMENTARY INFORMATION:** *Dietary Guidelines Advisory Committee:* The thirteen-member Committee appointed by the two Departments is chaired by Janet King, Ph.D., R.D., Children's Hospital Oakland Research Institute, Oakland, California. Other members are Lawrence J. Appel, M.D., M.P.H., Johns Hopkins Medical Institutions, Baltimore, Maryland; Yvonne L. Bronner, Sc.D., R.D., L.D., Morgan State University, Baltimore, Maryland; Benjamin Caballero, M.D., Ph.D., Johns Hopkins University Bloomberg School of Public Health, Baltimore, Maryland; Carlos A. Camargo, M.D., Dr.P.H., Harvard University, Boston, Massachusetts; Fergus M. Clydesdale, Ph.D., University of Massachusetts, Amherst, Amherst, Massachusetts; Vay Liang W. Go, M.D., University of California at Los Angeles, Los Angeles, California; Penny M. Kris-Etherton, Ph.D., R.D., Pennsylvania State University, University Park, Pennsylvania; Joanne R. Lupton, Ph.D., Texas A&M University, College Station, Texas; Theresa A. Nicklas, Dr.P.H., M.P.H., L.N., Baylor College of Medicine, Houston, Texas; Russell R. Pate, Ph.D., University of South Carolina, Columbia, South Carolina; F. Xavier Pi-Sunyer, M.D., M.P.H., Columbia University College of Physicians and Surgeons, New York, New York; and Connie M. Weaver, Ph.D., Purdue University, West Lafayette, Indiana.

*Purpose of Meeting:* The appointment of the Committee reflects the commitment by the HHS and USDA to provide sound and current dietary guidance to consumers. The National Nutrition Monitoring and Related Research Act of 1990 (Pub. L. 101–445, Title III) requires the Secretaries of HHS and USDA to publish the *Dietary Guidelines for Americans* at least every five years. During its first meeting, the Dietary Guidelines Advisory Committee decided that the science has changed since the 2000 edition of *Nutrition and Your Health: Dietary Guidelines for Americans* and further evaluation of the science is necessary. Therefore, it is conducting a review of current scientific and medical knowledge and will provide a technical report of any recommendations to the Secretaries for the year 2005 edition. The agenda will include (a) presentations from invited experts, (b) discussion of scientific reviews and related issues, and (c) formulation of plans for future work of the Committee.

*Public Participation at Meeting:* The meeting is open to the public. Because space is limited, pre-registration is requested. To pre-register, please e-mail *dietaryguidelines@osophs.dhhs.gov,* with "Meeting Registration" in the subject line or call Marianne Augustine at (202) 260–2322 by 5 p.m. e.s.t., March 19, 2004. Registration must include your name, affiliation, phone number, and days attending. Visitors must bring proper identification to attend the meeting. If you require a sign language interpreter, please call Marianne Augustine at (202) 260–2322 by March 12, 2004. Documents pertaining to Committee deliberations for the third meeting will be available for public inspection and copying in Room 738-G, 200 Independence Avenue, SW., Washington, DC, beginning the day before the meeting. All official documents are available for viewing by appointment for the duration of the Committee's term. Please call (202) 690–7102 to schedule an appointment to view the documents.

*Written Comments:* By this notice, the Committee is soliciting submission of written comments, views, information and data pertinent to review of the *Dietary Guidelines for Americans.* For those submitting comments more than 5 pages in length, please provide a 1-page summary of key points related to the comments submitted for the Dietary Guidelines Advisory Committee. To ensure transmittal to the Committee prior to the third meeting, comments must be submitted by 5 p.m. e.s.t., March 19, 2004. Comments are welcome throughout the Committee's deliberations and will be forwarded to the Committee as they are received. Comments should be sent to *dietaryguidelines@osophs.dhhs.gov* or to Kathryn McMurry, HHS Office of Disease Prevention and Health Promotion, Office of Public Health and

Science, Room 738–G, 200 Independence Avenue, SW., Washington, DC 20201.

Dated: March 2, 2004.

**Carter Blakey,**

*Acting Director, Office of Disease Prevention and Health Promotion, U.S. Department of Health and Human Services.*

Dated: March 3, 2004.

**Eric J. Hentges,**

*Executive Director, Center for Nutrition Policy and Promotion, U.S. Department of Agriculture.*

Dated: March 3, 2004.

**Caird E. Rexroad Jr.,**

*Acting Associate Administrator, Agricultural Research Service, U.S. Department of Agriculture.*

[FR Doc. 04–5343 Filed 3–9–04; 8:45 am]

BILLING CODE 4150–32–P

## DEPARTMENT OF COMMERCE

### Office of the Secretary

**[Docket Number 040217057–4057–01]**

### Estimates of the Voting Age Population for 2003

**AGENCY:** Office of the Secretary, Commerce.

**ACTION:** General notice announcing population estimates.

**SUMMARY:** This notice announces the voting age population estimates, as of July 1, 2003, for each state and the District of Columbia. We are giving this notice in accordance with the 1976 amendment to the Federal Election Campaign Act, Title 2, United States Code, Section 441a(e).

**FOR FURTHER INFORMATION CONTACT:** John F. Long, Chief, Population Division, Bureau of the Census, Department of Commerce, Room 2011, Federal Building 3, Washington, DC 20233, telephone 301–763–2071.

**SUPPLEMENTARY INFORMATION:** Under the requirements of the 1976 amendment to the Federal Election Campaign Act, Title 2, United States Code, Section 441a(e), I hereby give notice that the estimates of the voting age population for July 1, 2003, for each state and the District of Columbia are as shown in the following table.

ESTIMATES OF THE POPULATION OF VOTING AGE FOR EACH STATE AND THE DISTRICT OF COLUMBIA: JULY 1, 2003

[In Thousands]

| Area | Population 18 and over |
|---|---|
| United States | 217,766 |
| Alabama | 3,393 |
| Alaska | 460 |
| Arizona | 4,061 |
| Arkansas | 2,044 |
| California | 26,064 |
| Colorado | 3,398 |
| Connecticut | 2,648 |
| Delaware | 619 |
| District of Columbia | 455 |
| Florida | 13,095 |
| Georgia | 6,388 |
| Hawaii | 960 |
| Idaho | 994 |
| Illinois | 9,423 |
| Indiana | 4,592 |
| Iowa | 2,251 |
| Kansas | 2,028 |
| Kentucky | 3,124 |
| Louisiana | 3,319 |
| Maine | 1,019 |
| Maryland | 4,131 |
| Massachusetts | 4,946 |
| Michigan | 7,541 |
| Minnesota | 3,811 |
| Mississippi | 2,120 |
| Missouri | 4,297 |
| Montana | 702 |
| Nebraska | 1,298 |
| Nevada | 1,660 |
| New Hampshire | 981 |
| New Jersey | 6,507 |
| New Mexico | 1,373 |
| New York | 14,657 |
| North Carolina | 6,320 |
| North Dakota | 487 |
| Ohio | 8,621 |
| Oklahoma | 2,633 |
| Oregon | 2,710 |
| Pennsylvania | 9,535 |
| Rhode Island | 832 |
| South Carolina | 3,124 |
| South Dakota | 569 |
| Tennessee | 4,447 |
| Texas | 15,878 |
| Utah | 1,609 |
| Vermont | 482 |
| Virginia | 5,588 |
| Washington | 4,635 |
| West Virginia | 1,419 |
| Wisconsin | 4,139 |
| Wyoming | 380 |

I have certified these counts to the Federal Election Commission.

Dated: February 25, 2004.

**Donald L. Evans,**

*Secretary, Department of Commerce.*

[FR Doc. 04–4997 Filed 3–9–04; 8:45 am]

BILLING CODE 3510–07–P

## DEPARTMENT OF COMMERCE

### Census Bureau

### Survey of Income and Program Participation (SIPP) Wave 3 of the 2004 Panel

**ACTION:** Proposed collection; comment request.

**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 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 May 10, 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(s) and instructions should be directed to Judith H. Eargle, Census Bureau, FOB 3, Room 3387, Washington, DC 20233–8400, (301) 763–3819.

**SUPPLEMENTARY INFORMATION:**

#### I. Abstract

The Census Bureau conducts the SIPP which is a household-based survey designed as a continuous series of national panels. New panels are introduced every few years with each panel usually having durations of one to four years. Respondents are interviewed at 4-month intervals or "waves" over the life of the panel. The survey is molded around a central "core" of labor force and income questions that remain fixed throughout the life of the panel. The core is supplemented with questions designed to address specific needs, such as obtaining information about assets, liabilities, and child well-being, as well as expenses related to work, health care, and child support. These supplemental questions are included with the core and are referred to as "topical modules."

The SIPP represents a source of information for a wide variety of topics and allows information for separate topics to be integrated to form a single, unified database so that the interaction between tax, transfer, and other

government and private policies can be examined. Government domestic-policy formulators depend heavily upon the SIPP information concerning the distribution of income received directly as money or indirectly as in-kind benefits and the effect of tax and transfer programs on this distribution. They also need improved and expanded data on the income and general economic and financial situation of the U.S. population. The SIPP has provided these kinds of data on a continuing basis since 1983 permitting levels of economic well-being and changes in these levels to be measured over time.

The 2004 panel is currently scheduled for 4 years and will include 12 waves of interviewing, which began in February 2004. Approximately 62,000 households were selected for the 2004 panel, of which, 46,500 are expected to be interviewed. We estimate that each household will contain 2.1 people, yielding 97,650 interviews in Wave 1 and subsequent waves. Interviews take 30 minutes on average. Three waves of interviewing will occur in the 2004 SIPP Panel during FY 2005. The total annual burden for 2004 Panel SIPP interviews will be 146,475 hours in FY 2005.

The topical modules for the 2004 Panel Wave 3 collect information about:

- Medical Expenses and Utilization of Health Care (Adults and Children)
- Work Related Expenses and Child Support Paid
- Assets, Liabilities, and Eligibility
- Child Well-Being

Wave 3 interviews will be conducted from October 2004 through January 2005. A 10-minute reinterview of 3,100 people is conducted at each wave to ensure accuracy of responses. Reinterviews will require an additional 1,553 burden hours in FY 2005.

### II. Method of Collection

The SIPP is designed as a continuing series of national panels of interviewed households that are introduced every few years with each panel having durations of 1 to 4 years. All household members 15 years old or over are interviewed using regular proxy-respondent rules. During the 2004 panel, respondents are interviewed a total of 12 times (12 waves) at 4-month intervals making the SIPP a longitudinal survey. Sample people (all household members present at the time of the first interview) who move within the country and reasonably close to a SIPP primary sampling unit will be followed and interviewed at their new address. Individuals 15 years old or over who enter the household after Wave 1 will be interviewed; however, if these individuals move, they are not followed unless they happen to move along with a Wave 1 sample individual.

### III. Data

*OMB Number:* 0607–0905.

*Form Number:* SIPP/CAPI Automated Instrument.

*Type of Review:* Regular.

*Affected Public:* Individuals or Households.

*Estimated Number of Respondents:* 97,650 people per wave.

*Estimated Time Per Response:* 30 minutes per person on average.

*Estimated Total Annual Burden Hours:* 148,028.

*Estimated Total Annual Cost:* The only cost to respondents is their time.

*Respondent's Obligation:* Voluntary.

*Legal Authority:* Title 13, United States Code, section 182.

### 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 or included in the request for the Office of Management and Budget approval of this information collection. They also will become a matter of public record.

Dated: March 4, 2004.

**Madeleine Clayton,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 04–5318 Filed 3–9–04; 8:45 am]

BILLING CODE 3510–07–P

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## DEPARTMENT OF COMMERCE

## Census Bureau

## Quarterly Financial Report

**ACTION:** Proposed collection; comment request.

**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 May 10, 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(s) and instructions should be directed to Yolando M. St. George, U.S. Census Bureau, Room 1282–3, Washington, DC 20233, Telephone (301) 763–6600.

**SUPPLEMENTARY INFORMATION:**

### I. Abstract

The Quarterly Financial Report (QFR) Program is planning to resubmit for approval to the Office of Management and Budget (OMB) its four data collection forms: Quarterly Financial Report Forms QFR–101 (MG)—long form (Sent quarterly to Manufacturing, Mining, and Wholesale Trade corporations with assets of $50 million or more at time of sampling), QFR–102 (TR)—long form (Sent quarterly to Retail Trade corporations with assets of $50 million or more at time of sampling), QFR–101A (MG)—short form (Sent quarterly to Manufacturing corporations with assets of less than $50 million at time of sampling), and QFR–103 (NB)—Nature of Business Report (Sent at the beginning of sampling selection and at 2-year intervals if the corporation is included in the sample for more than eight quarters). The current expiration for these forms is July 31, 2004.

The QFR Program has published up-to-date aggregate statistics on the financial results and position of U.S. corporations since 1947. It is a principal economic indicator that also provides financial data essential to calculation of key Government measures of national economic performance. The importance of this data collection is reflected by the granting of specific authority to conduct the program in Title 13 of the United States Code, Section 91, which requires that financial statistics of business operations be collected and published quarterly. Public Law 105–252 extended the authority of the Secretary of Commerce to conduct the QFR Program under Section 91 through September 30, 2005.

The current scope of the QFR includes corporations in the Mining, Manufacturing, Wholesale Trade, and Retail Trade sectors. The main purpose of the QFR is to provide timely, accurate data on business financial conditions for use by Government and private-sector organizations and individuals. An extensive subscription mailing list attests to the diverse groups using these data including foreign countries, universities, financial analysts, unions, trade associations, public libraries, banking institutions, and U.S. and foreign corporations. The primary users are U.S. Governmental organizations charged with economic policymaking responsibilities. These organizations play a major role in providing guidance, advice, and support to the QFR Program.

**II. Method of Collection**

The Census Bureau will primarily use mail out/mail back survey forms to collect data. Companies will be asked to respond to the survey within 25 days of the end of the quarter for which the data are being requested, except for form QFR–103 (NB) which is due 30 days after receipt by the companies. Letters and/or telephone calls encouraging participation will be directed to respondents that have not responded by the designated time. The QFR Program introduced the use of computer readable medium for optional use as a substitute for the paper form to all companies filing long forms QFR–101 (MG) and QFR–102 (TR). The Computerized Self-Administered Questionnaire (CSAQ) is an electronic version of the data collection form. It provides the data provider with interactive edits making it possible to identify potential reporting problems before submission, thus reducing the need for follow-up. The CSAQ can be completed and submitted electronically via the Internet or by returning the CSAQ by mail for electronic data capture. During the next year a CSAQ short form will be developed and made available to companies filing the QFR–101A (MG).

**III. Data**

*OMB Number:* 0607–0432.

*Form Number:* QFR–101 (MG), QFR–102 (TR), QFR–101A (MG), and QFR–103 (NB).

*Type of Review:* Regular Review.

*Affected Public:* Manufacturing corporations with assets of $250 thousand or more and Mining, and Wholesale and Retail Trade corporations with assets of $50 million or more.

*Estimated Number of Respondents:*
Form QFR–101 (MG)—3,976 per quarter =15,904 annually
Form QFR–102 (TR)—490 per quarter = 1,960 annually
Form QFR–101A (MG)—4,231 per quarter = 16,924 annually
Form QFR–103 (NB)—1,414 per quarter = 5,656 annually
Total 40,444 annually

*Estimated Time Per Response:*
Form QFR–101 (MG)—Average hours 3.0
Form QFR–102 (TR)—Average hours 3.0
Form QFR–101A (MG)—Average hours 1.2
Form QFR–103 (NB)—Average hours 2.4

*Estimated Total Annual Burden Hours:* 85,000 hours.

*Estimated Total Annual Cost:* $2.0 million.

*Respondent's Obligation:* Mandatory.

*Legal Authority:* Title 13 United States Code, Sections 91 and 224.

**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: March 5, 2004.

**Madeleine Clayton,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 04–5357 Filed 3–9–04; 8:45 am]

BILLING CODE 3510–07–P

## DEPARTMENT OF COMMERCE

### Bureau of the Census

### Census Advisory Committees

**AGENCY:** Bureau of the Census, Department of Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, Title 5, United States Code, Appendix 2, Section 10(a)(b), the Bureau of the Census (Census Bureau) is giving notice of a joint meeting, followed by separate and concurrently held meetings of the Census Advisory Committees (CACs) on the African American Population, the American Indian and Alaska Native Populations, the Asian Population, the Hispanic Population, and the Native Hawaiian and Other Pacific Islander Populations. The Committees will address issues related to the 2010 reengineered decennial census, including the American Community Survey and other related decennial programs. The five CACs on Race and Ethnicity will meet in plenary and concurrent sessions on May 5–7. Last minute changes to the schedule are possible, which could prevent us from giving advance notification.

**DATES:** May 5–7, 2004. On May 5, the meeting will begin at approximately 8:30 a.m. and end at approximately 5 p.m. On May 6, the meeting will begin at approximately 8:30 a.m. and end at approximately 5 p.m. On May 7, the meeting will begin at approximately 8:30 a.m. and end at approximately 12:15 p.m.

**ADDRESSES:** The meeting will be held at the Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, Virginia 22202.

**FOR FURTHER INFORMATION CONTACT:** Jeri Green, Committee Liaison Officer, Department of Commerce, U.S. Census Bureau, Room 3627, Federal Office Building 3, Washington, DC 20233, telephone (301) 763–2070, TTY (301) 457–2540.

**SUPPLEMENTARY INFORMATION:** The CACs on the African American Population, the American Indian and Alaska Native Populations, the Asian Population, the Hispanic Population, and the Native Hawaiian and Other Pacific Islander Populations are comprised of nine members each. The Committees provide an organized and continuing channel of communication between the representative race and ethnic populations and the Census Bureau. The Committee provides an outside-user perspective about how research and design plans for the 2010 reengineered decennial census, the American Community Survey, and other related programs realize goals and satisfy needs associated with these communities. They also assist the Census Bureau on ways that census data can best be disseminated to diverse race and ethnic populations and other users.

All meetings are open to the public. A brief period will be set aside at the meeting for public comment. However,

individuals with extensive questions or statements must submit them in writing to the Committee Liaison Officer, named above, at least three days before the meeting. Seating is available to the public on a first-come, first-served basis.

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Committee Liaison Officer as soon as known and preferably two weeks prior to the meeting.

Dated: March 5, 2004.

**Charles Louis Kincannon,**

*Director, Bureau of the Census.*

[FR Doc. 04–5346 Filed 3–9–04; 8:45 am]

BILLING CODE 3510–07–P

## DEPARTMENT OF COMMERCE

### Bureau of the Census

### Census Advisory Committee of Professional Associations

**AGENCY:** Bureau of the Census, Department of Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463 as amended by Pub. L. 94–409), the Bureau of the Census (Census Bureau) is giving notice of a meeting of the Census Advisory Committee of Professional Associations. The Committee will address issues regarding Census Bureau programs and activities related to their areas of expertise. Members will address policy, research, and technical issues related to the 2010 decennial census, including the American Community Survey and related programs. The Committee also will discuss several economic initiatives, as well as issues pertaining to marketing services, measurement of local labor market activity, and data stewardship. Last minute changes to the agenda are possible, which could prevent giving advance notice of schedule adjustments.

**DATES:** April 22–23, 2004. On April 22, the meeting will begin at approximately 9 a.m. and adjourn at approximately 5:15 p.m. On April 23, the meeting will begin at approximately 9 a.m. and adjourn at approximately 12:15 p.m.

**ADDRESSES:** The meeting will be held at the U.S. Census Bureau, 4700 Silver Hill Road, Suitland, Maryland 20746.

**FOR FURTHER INFORMATION CONTACT:** Jeri Green, Committee Liaison Officer, Department of Commerce, U.S. Census Bureau, Room 3627, Federal Building 3, Washington, DC 20233. Her telephone number is 301–763–2070, TDD 301–457–2540.

**SUPPLEMENTARY INFORMATION:** The Census Advisory Committee of Professional Associations is composed of 36 members, appointed by the Presidents of the American Economic Association, the American Statistical Association, and the Population Association of America, and the Chairperson of the Board of the American Marketing Association. The Committee members address issues regarding Census Bureau programs and activities related to their respective areas of expertise.

The meeting is open to the public, and a brief period is set aside for public comment and questions. Those persons with extensive questions or statements must submit them in writing, at least three days before the meeting, to the Committee Liaison Officer named above in the **FOR FURTHER INFORMATION CONTACT** heading. Seating is available to the public on a first-come, first-served basis.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should also be directed to the Committee Liaison Officer.

Dated: March 5, 2004.

**Charles Louis Kincannon,**

*Director, Bureau of the Census.*

[FR Doc. 04–5345 Filed 3–9–04; 8:45 am]

BILLING CODE 3510–07–P

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Docket 5–2004]**

### Foreign-Trade Zone 229—Charleston, West Virginia Application For Foreign-Trade Subzone Status E.I. du Pont de Nemours and Company, Inc. (Crop Protection Products); Belle, WV

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the West Virginia Economic Development Authority, grantee of FTZ 229, requesting special-purpose subzone status for the manufacturing facilities (crop protection products) of E.I. du Pont de Nemours and Company, Inc. (DuPont), located in Belle, West Virginia. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on February 25, 2004.

The DuPont facilities are located at 901 West Dupont Avenue in Belle (105.77 acres with 113 buildings and 962,000 sq. ft. of enclosed space; potential expansion to include two more buildings with an additional 78,000 sq. ft.). The facilities (approximately 500 employees) produce crop protection products which DuPont intends to manufacture, test, package, and warehouse under FTZ procedures.

The company's list of categories of imported parts and materials for possible use in its operations under FTZ procedures includes: Inorganic acids and other inorganic oxygen compounds of nonmetals; sulfides of nonmetals; ammonia; sodium hydroxide, potassium hydroxide, and peroxides of sodium or potassium; hydrazine and hydroxylamine and their inorganic salts, other inorganic bases, and other metal oxides, hydroxides, and peroxides; fluorides, fluorosilicates, fluoroaluminates, and other complex fluorine salts; chlorides, chloride oxides and chloride hydroxides, bromides and bromide oxides, and iodides and iodide oxides; chlorates and perchlorates, bromates and perbromates, and iodates and periodates; sulfides and polysulfides; sulfates, alums, and peroxosulfates; phosphinates, phosphonates, phosphates, and polyphosphates; carbonates, peroxocarbonates, and commercial ammonium carbonate containing ammonium carbamate; cyanides, cyanide oxides and complex cyanides; fulminates, cyanates and thiocyanates; other inorganic compounds, liquid air, compressed air, and amalgams; cyclic hydrocarbons; halogenated derivatives of hydrocarbons; derivatives of hydrocarbons; acyclic alcohols and derivatives; cyclic alcohols and derivatives; phenols and phenol-alcohols, and their derivatives; ethers, ether-alcohols, ether-phenols, ether-alcohol-phenols, alcohol peroxides, ether peroxides, ketone peroxides, and their derivatives; epoxides, epoxyalcohols, epoxyphenols and epoxyethers, and their derivatives; acetals and hemiacetals and their derivatives; aldehydes, cyclic polymers of aldehydes, and paraformaldehyde; derivatives of products of HTS heading 2912; ketone function compounds and quinone function compounds; saturated acyclic monocarboxylic acids and derivatives; unsaturated acyclic monocarboxylic acids and derivatives; polycarboxylic acids and derivatives; carboxylic acids and derivatives; phosphoric esters, salts, and derivatives; esters of other inorganic salts, and their salts and derivatives; amine function compounds; oxygen-function amino-compounds; quaternary ammonium salts and hydroxides, lecithins, and

other phosphoaminolipids; carboxyamide-function compounds and amide-function compounds of carbonic acid; carboxyimide-function and imine-function compounds; nitrile-function compounds; diazo-, azo-, or azoxy-compounds; organic derivatives of hydrazine or of hydroxylamine; organo-sulfur compounds; other organo-inorganic compounds; heterocyclic compounds with oxygen hetero-atoms only; heterocyclic compounds with nitrogen hetero-atom(s) only; sulfonamides; glycosides and derivatives; vegetable alkaloids and derivatives; sugars other than sucrose, lactose, maltose, glucose and fructose, sugar ethers and sugar esters, and their salts; other organic compounds; essential oils and resinoids; organic surface-active agents; insecticides, rodenticides, fungicides, herbicides, etc.; reaction initiators and accelerators; prepared binders for foundry molds or cores; polymers of ethylene; cellulose and its chemical derivatives; self-adhesive plates, sheets, film, foil, tape, strip and other flat shapes, of plastics; other plates, sheets, film, foil and strip, of plastics; articles for the conveyance or packing of goods; and other articles of plastic and articles of other materials of HTS headings 3901 to 3914. Current duty rates for these input materials range up to seven percent.

Zone procedures would exempt DuPont from Customs duty payments on foreign components used in export production. On its domestic sales, DuPont would be able to defer duty payments. DuPont would be able to avoid duty on foreign inputs which become scrap/waste, estimated at less than one percent of imported inputs. The application also indicates that the company will derive savings from simplification and expediting of the company's import and export procedures and from transfer of foreign-status merchandise to other FTZs or subzones. DuPont's application indicates that the company will not derive any savings from inverted tariffs (*i.e.*, from situations where a lower duty rate applies to a finished product than applies to its foreign input(s)). All of the above-cited savings from zone procedures could help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions Via Express/Package Delivery Services: Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St. NW., Washington, DC 20005; or

2. Submissions Via the U.S. Postal Service: Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave. NW., Washington, DC 20230.

The closing period for their receipt is May 10, 2004. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to May 24, 2004.

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address Number 1 listed above, and at the U.S. Department of Commerce Export Assistance Center, 405 Capitol Street, Suite 807, Charleston, WV 25301.

Dated: February 27, 2004.

**Dennis Puccinelli,**

*Executive Secretary.*

[FR Doc. 04–5384 Filed 3–9–04; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

### Procedures for Acceptance or Rejection of a Rated Order

**ACTION:** Notice and request for comments.

**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 May 10, 2004.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Office of the Chief Information Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 or via Internet at *DHynek@doc.gov*).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Marna Dove, BIS ICB Liaison, Projects and Planning Division, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

#### I. Abstract

The record keeping requirement is necessary for administration and enforcement of delegated authority under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, *et seq.*) and the selective Service Act of 1948 (50 U.S.C. App. 468). Any person (supplier) who receives a priority rated order under DPAS regulation (15 CFR part 700) must notify the customer of acceptance or rejection of that order within a specified period of time. Also, if shipment against a priority rated order will be delayed, the supplier must immediately notify the customer.

#### II. Method of Collection

Written submission.

#### III. Data

*OMB Number:* 0694–0092.

*Form Number:* Not applicable.

*Type of Review:* Regular submission for extension of a currently approved collection.

*Affected Public:* Individuals, businesses or other for-profit and not-for-profit institutions.

*Estimated Number of Respondents:* 18,000.

*Estimated Time Per Response:* 1 to 15 minutes per response.

*Estimated Total Annual Burden Hours:* 21,963.

*Estimated Total Annual Cost:* No start-up capital expenditures.

#### 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 will also become a matter of public record.

Dated: March 4, 2004.

**Madeleine Clayton,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 04–5320 Filed 3–9–04; 8:45 am]

BILLING CODE 3510–JT–P

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

### Procedure For Voluntary Self-Disclosure of Violations of the EAR

**AGENCY:** Bureau of Industry and Security, Commerce.

**ACTION:** Proposed collection; comment request.

**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, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before May 10, 2004.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Office of the Chief Information Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Marna Dove, BIS ICB Liaison, Office of Planning, Evaluation and Management, Department of Commerce, Room 6622, 14th & Constitution Ave., NW., room 6877, Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

The information is needed to detect violations of the Export Administration Act and Regulations to determine if an investigation or prosecution is necessary and to reach settlement with violators. The respondents are likely to be export-related businesses.

**II. Method of Collection**

Written submission.

**III. Data**

*OMB Number:* 0694–0058.
*Form Number:* Not applicable.
*Type of Review:* Regular submission for extension of a currently approved collection.
*Affected Public:* Individuals, businesses or other for-profit and not-for-profit institutions.
*Estimated Number of Respondents:* 67.
*Estimated Time Per Response:* 10 hours per response.
*Estimated Total Annual Burden Hours:* 670.
*Estimated Total Annual Cost:* No start-up or capital expenditures.

**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 will also become a matter of public record.

Dated: March 5, 2004.

**Madeleine Clayton,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 04–5356 Filed 3–9–04; 8:45 am]

BILLING CODE 3510–DT–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Non-Tariff Barriers Survey

**AGENCY:** International Trade Administration, Commerce.

**ACTION:** Proposed collection; comment request.

**SUMMARY:** The Department of Commerce, as part of its continuing effort and other Federal agencies to take this opportunity to comment on the continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before May 10, 2004.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th & Constitution Avenue, NW., Washington, DC 20230 or via the Internet at *Dhynek@doc.gov*.

**FOR FURTHER INFORMATION CONTACT:** Request for copies of the information collection instrument and instructions should be directed to: Corey Wright, Trade Development, Office of Environmental Technologies Industries (ETI), Room 1003; U.S. Department of Commerce, 14th & Constitution Ave., NW., Washington, DC 20230; Phone number: (202) 482–5225.

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

The International Trade Administration's Office of Environmental Technologies Industries (ETI) office is the principal resource and key contact point within the U.S. Department of Commerce for American environmental technology companies. ETI's goal is to facilitate and increase exports of environmental technologies, goods and services by providing support and guidance to U.S. exporters. One aspect of increasing exports is to reduce trade barriers and non-tariff measures. ETI works closely with the Office of the U.S. Trade Representative on trade negotiations and trade liberalization initiatives. The information collected by this survey will be used to support these projects and enable ETI to maintain a current, up-to-date list of non-tariff measures that create trade barriers for U.S. exports of environmental goods and services.

**II. Method of Collection**

Electronic submission to the International Trade Administration's Office of Environmental Technologies Industries.

**III. Data**

*OMB Number:* 0625–0241.
*Form Number:* ITA–4150P.
*Type of Review:* Regular Submission.
*Affected Public:* Business or other for profit.
*Estimated Number of Respondents:* 200.
*Estimated Time Per Response:* 10 minutes.
*Estimated Total Annual Burden Hours:* 33 hours.
*Estimated Total Annual Costs:* $12,000 (Government $5,000, Respondents $7,000).

**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 costs) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or 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: March 4, 2004.

**Madeleine Clayton,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 04–5319 Filed 3–9–04; 8:45 am]

BILLING CODE 3510–DR–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–803]**

### Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Preliminary Results of Administrative Reviews, Preliminary Partial Rescission of Antidumping Duty Administrative Reviews, and Determination Not To Revoke in Part

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Preliminary results of antidumping duty administrative reviews.

**SUMMARY:** The Department of Commerce (the Department) is conducting administrative reviews of the antidumping duty orders on heavy forged hand tools, finished or unfinished, with or without handles (HFHTs), from the People's Republic of China (PRC). The period of review (POR) is February 1, 2002, through January 31, 2003. These reviews cover imports of subject merchandise from four manufacturers/exporters.

We preliminarily determine that certain manufacturers/exporters sold subject merchandise at less than normal value (NV) during the POR. If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. We have also preliminarily determined not to revoke the antidumping duty order on hammers/sledges with respect to hammers/sledges produced by Shandong Jinma Industrial Group Co., Ltd. (Jinma) and exported by Shandong Machinery Import & Export Corporation (SMC).

We invite interested parties to comment on these preliminary review results. We will issue the final review results no later than 120 days from the date of publication of this notice.

**EFFECTIVE DATE:** March 10, 2004.

**FOR FURTHER INFORMATION CONTACT:** Mark Manning or Thomas Martin; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–5253 and (202) 482–3936, respectively.

**SUPPLEMENTARY INFORMATION:**

### Background

On February 19, 1991, the Department published in the **Federal Register** (56 FR 6622) four antidumping orders on HFHTs from the PRC. Imports covered by these orders comprise the following classes or kinds of merchandise: (1) Hammers and sledges with heads over 1.5 kg (3.33 pounds) (hammers/sledges); (2) bars over 18 inches in length, track tools and wedges (bars/wedges); (3) picks/mattocks; and (4) axes/adzes. *See* the *Scope of Reviews* section below for the complete description of subject merchandise.

On February 27, 2003, five exporters of the subject merchandise requested that the Department conduct administrative reviews of their exports of subject merchandise. Specifically, Tianjin Machinery Import & Export Corporation (TMC) requested that the Department conduct an administrative review of its exports of merchandise covered by the hammers/sledges order. Shangdong Huarong Machinery Co., Ltd. (Huarong) requested that the Department conduct an administrative review of its exports of merchandise covered by the bars/wedges order. Similarly, Liaoning Machinery Import & Export Corporation (LMC) and Liaoning Machinery Import & Export Corporation, Ltd. (LIMAC) also requested that the Department conduct an administrative review of their exports of merchandise covered by the bars/wedges order, and requested revocation pursuant to 19 CFR 351.222(b). Lastly, SMC requested that the Department conduct an administrative review of its exports of merchandise covered by the hammers/sledges and bars/wedges orders, and also requested revocation with respect to hammers/sledges pursuant to 19 CFR 351.222(b).

On February 28, 2003, the petitioner, Ames True Temper, requested administrative reviews of merchandise of 88 PRC producers/exporters covered by the axes/adzes, bars/wedges and hammers/sledges orders, in addition to the five companies identified above. Regarding the picks/mattocks order, the petitioner requested administrative reviews for the following six PRC companies, which were also included in the petitioner's request for review of the other three HFHTs orders: Fujian Machinery & Equipment Import & Export Corporation (FMEC), Huarong, Jinma, LMC, SMC, and TMC. On March 25, 2003, the Department published a notice of initiation of administrative reviews of merchandise covered by the four orders on HFHTs, produced/exported by the PRC companies identified by the petitioner, which includes the five companies identified above that requested a review of their own sales of subject merchandise. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 68 FR 14394 (March 25, 2003).

On March 26, 2003, the Department issued a shortened section A questionnaire to all of the PRC producers/exporters identified in the notice of initiation. This questionnaire requested that these companies report the quantity and value of their sales of merchandise during the POR that are subject to the four HFHTs antidumping orders.[1] In April and May 2003, we received letters from ten PRC producers/exporters stating that they had no shipments of subject merchandise during the POR. We received, on April 23, 2003, the shortened section A questionnaire responses from Huarong, LMC/LIMAC, SMC, TMC, and Jiangsu Guotai International Group Huatai Import & Export Company, Ltd. (Jiangsu). On May 6, 2003, the Department issued to interested parties the draft physical product characteristics for hand tools that we intend to use to make our fair value comparisons. From May 21, 2003 through May 28, 2003, the Department received comments on these physical product characteristics. Also on May 6, 2003, the Department issued the full section A questionnaire to Huarong, LMC/LIMAC, SMC, TMC, and Jiangsu. We received responses from Huarong, LMC/LIMAC, SMC, and TMC on May 28, 2003, and from Jiangsu on June 12,

[1] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under review that it sells, and the manner in which it sells that merchandise in all of its markets.

2003. On June 18, 2003, the Department issued sections C and D of the antidumping questionnaire to Huarong, LMC/LIMAC, SMC, TMC, and Jiangsu.[2] Although Jiangsu's response to sections C and D of the questionnaire was due on July 25, 2003, the Department received no response from this company. On August 4, 2003, the Department notified Jiangsu that its response to sections C and D of the questionnaire was past due and requested that Jiangsu notify the Department if it had encountered unexpected difficulties in submitting its response. However, the Department never received a response to its August 4, 2003, letter. We received responses to sections C and D of the antidumping questionnaire on August 11, 2003 from Huarong, LMC/LIMAC, and SMC, and on August 18, 2003 from TMC. The Department issued numerous supplemental questionnaires to Huarong, LMC/LIMAC, SMC, and TMC throughout the period June through November 2003. We received timely responses to these supplemental questionnaires.

On October 16, 2003, the Department extended the time limit for completion of these preliminary review results until no later than March 1, 2004. *See Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review,* 68 FR 59583 (October 16, 2003).

**Scope of Reviews**

The products covered by these reviews are HFHTs from the PRC, comprising the following classes or kinds of merchandise: (1) Hammers and sledges with heads over 1.5 kg (3.33 pounds) (hammers/sledges); (2) bars over 18 inches in length, track tools and wedges (bars/wedges); (3) picks and mattocks (picks/mattocks); and (4) axes, adzes and similar hewing tools (axes/adzes).

HFHTs include heads for drilling hammers, sledges, axes, mauls, picks and mattocks, which may or may not be painted, which may or may not be finished, or which may or may not be imported with handles; assorted bar products and track tools including wrecking bars, digging bars and tampers; and steel wood splitting wedges. HFHTs are manufactured through a hot forge operation in which steel is sheared to required length, heated to forging temperature, and formed to final shape on forging equipment using dies specific to the desired product shape and size. Depending on the product, finishing operations may include shot blasting, grinding, polishing and painting, and the insertion of handles for handled products. HFHTs are currently provided for under the following Harmonized Tariff System of the United States (HTSUS) subheadings: 8205.20.60, 8205.59.30, 8201.30.00, and 8201.40.60. Specifically excluded from these investigations are hammers and sledges with heads 1.5 kg. (3.33 pounds) in weight and under, hoes and rakes, and bars 18 inches in length and under. The HTSUS subheadings are provided for convenience and CBP purposes. The written description remains dispositive.

The Department has issued five final scope rulings regarding the merchandise covered by these orders: (1) On August 16, 1993, the Department found the "Max Multi-Purpose Axe," imported by the Forrest Tool Company, to be within the scope of the axes/adzes order; (2) on March 8, 2001, the Department found "18-inch" and "24-inch" pry bars, produced without dies, imported by Olympia Industrial, Inc. and SMC Pacific Tools, Inc., to be within the scope of the bars/wedges order; (3) on March 8, 2001, the Department found the "Pulaski" tool, produced without dies by TMC, to be within the scope of the axes/adzes order; (4) on March 8, 2001, the Department found the "skinning axe," produced through a stamping process, imported by Import Traders, Inc., to be within the scope of the axes/adzes order; and (5) on September 22, 2003, the Department found cast picks, produced through a casting process by TMC, to be within the scope of the picks/mattocks order.

**LMC and LIMAC**

In 1998, LMC underwent a reorganization and was split into two companies—LMC and LIMAC. According to LMC/LIMAC, the purpose of this reorganization was to increase business efficiency and conform with Chinese state policy that required companies to change their corporate ownership from an "all people's owned" basis to a "limited liability" basis. *See* LMC/LIMAC's May 28, 2003, submission at page 3 of Exhibit 7 and November 19, 2003, submission at 5. The part of the company that retained the name LMC is an "all people's owned" company, meaning that it belongs to the public, while the part of the company that became LIMAC is a "limited liability" company, which is owned by shareholders. In addition, pursuant to this reorganization, LIMAC received authorization to export merchandise, and the decision was made to move LMC's export/import business to LIMAC. *See* LMC/LIMAC's May 28, 2003, submission at page 4 of Exhibit 7. LMC and LIMAC state that, in light of the policy that corporate ownership should be on a "limited liability" basis, and the decision to transfer business operations to LIMAC, most of LMC's staff has been transferred to LIMAC. The few remaining employees at LMC are there primarily for "wrapping up" operations. *See* LMC/LIMAC's November 19, 2003, submission at 5.

LMC and LIMAC claim that they are, in effect, one company with two names. *See* LMC/LIMAC's September 29, 2003, submission at 3. According to LMC and LIMAC, (1) the two companies share the same suppliers; (2) all sales income is kept in LIMAC's bank account even if the sale is made in LMC's name; (3) all business is directed to LIMAC, except for long-time customers who are familiar with the LMC name; (4) both companies use the same chart of accounts; and (5) the same sales staff manages all of the trading company business for both LMC and LIMAC, makes all of the pricing decisions for both LMC and LIMAC, and maintains all of the sales records pertaining to both LMC and LIMAC. *See* LMC/LIMAC's September 29, 2003, response at A–3 and A–4, and LMC/LIMAC's November 19, 2003, response at 1–5. Lastly, we note that comparing the export sales figures on LMC and LIMAC's income statements supports their assertion that export business is being directed to LIMAC. *See* LMC/LIMAC's May 28, 2003, submission at Exhibits 13–14.

In light of the above, it appears that LMC is being dissolved and replaced by LIMAC. Moreover, the fact that the same personnel export subject merchandise and make pricing decisions, regardless of which company's invoice is used, indicates that a single sales staff knows the identify of both company's customers and has the discretion to assign sales to either company. Since LIMAC's operations are intertwined with LMC's operations, it would frustrate the purpose of the antidumping statute to grant LMC and LIMAC separate dumping margins. Given the shared personnel, operations, and decision making of LMC and LIMAC, we conclude that LMC and LIMAC did not operate independently of each other during the POR and they should receive a single antidumping duty rate. Therefore, we preliminarily determine that it is appropriate to treat LMC and

[2] Section C of the questionnaire requests a complete listing of U.S. sales. Section D requests information on the factors of production (FOP) of the merchandise under review.

LIMAC as a single entity for purposes of the margin calculations for these administrative reviews and the application of the antidumping law. *See Freshwater Crawfish Tail Meat From the People's Republic of China: Final Results of Administrative Antidumping Duty and New Shipper Reviews, and Final Rescission of New Shipper Review*, 65 FR 20948 (April 19, 2000) and accompanying Issues and Decision Memorandum at Comment 16 (where the Department considered the operations of two PRC trading companies to be sufficiently intertwined as to warrant receiving the same antidumping duty rate).

**Preliminary Partial Rescission**

In accordance with 19 CFR 351.213(d)(3), we are preliminarily rescinding these reviews with respect to Zhenjiang All Joy Light Industrial Products & Textiles; Linshu Jinrun Ironware & Tools Co., Ltd.; Jinhua Runhua Foreign Trade Co., Ltd.; Tian Rui International Trade Co., Ltd.; Jinhua Twin-Star Tools Co., Ltd.; Jinma, Ltd.; Hebei Machinery Import & Export Corporation; Chenzhou Estar Enterprises Ltd.; China National Machinery Import & Export Corporation; and Ningbo Tiangong Tools Co., Ltd., who reported that they did not sell merchandise subject to any of the four HFHT antidumping orders during the POR. We are also preliminarily rescinding the review of Huarong and LMC/LIMAC with respect to the hammers/sledges and picks/mattocks orders, since Huarong and LMC/LIMAC reported that they made no shipments of subject hammers/sledges and picks/mattocks. No one has placed evidence on the record to indicate that these companies had sales of subject merchandise during the POR. In addition, we examined shipment data furnished by CBP for the producers/exporters identified above and are satisfied that the record does not indicate that there were U.S. entries of subject merchandise from these companies during the POR.

**Preliminary Determination To Not Revoke in Part**

The Department "may revoke, in whole or in part" an antidumping duty order upon completion of a review under section 751 of the Tariff Act of 1930, as amended (the Act). While Congress has not specified the procedures that the Department must follow in revoking an order, the Department has developed a procedure for revocation that is described in 19 CFR 351.222. This regulation requires, *inter alia*, that a company requesting revocation must submit the following: (1) A certification that the company has sold the subject merchandise at not less than NV in the current review period and that the company will not sell at less than NV in the future; (2) a certification that the company sold the subject merchandise in commercial quantities in each of the three years forming the basis of the revocation request; and (3) an agreement to reinstatement in the order or suspended investigation, as long as any exporter or producer is subject to the order (or suspended investigation), if the Secretary concludes that the exporter or producer, subsequent to the revocation, sold the subject merchandise at less than NV. *See* 19 CFR 351.222(e)(1). Upon receipt of such a request, the Department will consider the following in determining whether to revoke the order in part: (1) Whether the producer or exporter requesting revocation has sold subject merchandise at not less than NV for a period of at least three consecutive years; (2) whether the continued application of the antidumping duty order is otherwise necessary to offset dumping; and (3) whether the producer or exporter requesting revocation in part has agreed in writing to immediate reinstatement of the order, as long as any exporter or producer is subject to the order, if the Department concludes that the exporter or producer, subsequent to revocation, sold the subject merchandise at less than NV. *See* 19 CFR 351.222(b)(2); *see also Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review and Intent to Revoke Antidumping Duty Order in Part: Certain Pasta From Italy*, 66 FR 34414, 34420 (June 28, 2001).

On February 27, 2003, SMC submitted a request, in accordance with 19 CFR 351.222(e)(1), that the Department revoke the order covering hammers/sledges from the PRC with respect to its sales. In accordance with 19 CFR 351.222(e)(1), the request was accompanied by certifications from SMC that, for three consecutive years, including this review period, it sold the subject merchandise in commercial quantities at not less than NV, and would continue to do so in the future. SMC also agreed to its immediate reinstatement in this antidumping order, as long as any producer or exporter is subject to the order, if the Department concludes, subsequent to revocation, that SMC sold the subject merchandise at less than NV.

For these preliminary results, the Department has relied upon SMC's sales activity during the 2000–2001, 2001–2002, and 2002–2003 PORs in making its decision regarding SMC's revocation request. In the final results of the 2000–2001 administrative review, SMC received a *de minimis* dumping margin on its sales of hammers/sledges produced by Jinma. *See Notice of Amended Final Results of Antidumping Duty Administrative Reviews: Heavy Forged Hand Tools From the People's Republic of China (Hammers/Sledges)*, 68 FR 14943 (March 27, 2003) (HFHTs 2000–2001 Review). SMC withdrew its request for review in the intervening administrative review, which covered the 2001–2002 period. *See Heavy Forged Hand Tools from the People's Republic of China: Partial Rescission of Antidumping Duty Administrative Review*, 68 FR 352 (January 3, 2003). In the instant review, covering the 2002–2003 period, SMC is preliminarily receiving a *de minimis* dumping margin with respect to its sales of hammers/sledges produced by Jinma.

In determining whether the absence of dumping over three consecutive years is a sufficient basis to revoke an order, in part, the Department must be able to determine that the company continued to participate meaningfully in the U.S. market during each of the three years at issue. *See Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada; Final Results of Antidumping Duty Administrative Reviews and Determination To Revoke in Part*, 64 FR 2173, 2175 (January 13, 1999); *see also Pure Magnesium From Canada; Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke Order in Part*, 64 FR 12977, 12979 (March 16, 1999); and *Notice of Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke the Antidumping Order: Brass Sheet and Strip from the Netherlands*, 65 FR 742 (January 6, 2000). This practice has been codified in 19 CFR 351.222(d)(1), which states that, "before revoking an order or terminating a suspended investigation, the Secretary must be satisfied that, during each of the three (or five) years, there were exports to the United States in commercial quantities of the subject merchandise to which a revocation or termination will apply." *See* 19 CFR 351.222(d)(1); *see also* 19 CFR 351.222(e)(1)(ii). For purposes of revocation, the Department must be able to determine that past margins are reflective of a company's normal commercial activity. Sales during the POR which, in the aggregate, are of an abnormally small quantity, do not provide a reasonable basis for

determining that the order is no longer necessary to offset dumping.

We preliminarily determine that SMC did not ship hammers/sledges produced by Jinma to the United States in commercial quantities during the three consecutive years under consideration. Specifically, we find that the quantity of SMC's sales to the United States in the *HFHTs 2000–2001 Review* were a small percentage of the quantity of sales SMC made during the investigative period. *See* Memorandum from Jeff Pedersen, Case Analyst, to the File, "Commercial Quantity Analysis of Shipments of Heavy Forged Hand Tools (Hammers/Sledges) to the United States by Shandong Machinery Import & Export Corporation," dated March 1, 2004. Consequently, although SMC received a *de minimis* margin during the first review period, and is preliminarily receiving a *de minimis* margin in the instant review, the margin from the first administrative review was not based on commercial quantities within the meaning of the revocation regulation. The sales volume during the *HFHTs 2000–2001 Review* is so small in comparison with the sales volume during the investigative period that it does not provide any meaningful information on SMC's normal commercial experience. Therefore, we preliminarily determine that SMC does not qualify for revocation from the order on hammers/sledges under 19 CFR 351.222 (b) and (e).

On February 27, 2003, LMC/LIMAC submitted a request, in accordance with 19 CFR 351.222(e)(1), that the Department revoke the order covering bars/wedges from the PRC with respect to its sales. In accordance with 19 CFR 351.222(e)(1), the request was accompanied by certifications from LMC/LIMAC that, for three consecutive years, including this review period, it sold the subject merchandise in commercial quantities at not less than NV, and would continue to do so in the future. LMC/LIMAC also agreed to its immediate reinstatement in this antidumping order, as long as any producer or exporter is subject to the order, if the Department concludes, subsequent to revocation, that it sold the subject merchandise at less than NV.

As discussed in the *Use of Facts Available* section below, we have preliminarily determined that the use of adverse facts available (AFA) is warranted with respect to LMC/LIMAC's sales of bars/wedges during the POR. Since LMC/LIMAC has not received a zero or *de minimis* margin in the instant review, we preliminarily determine not to revoke the order with respect to LMC/LIMAC's sales of bars/wedges to the United States.

**Verification**

As provided in section 782(i) of the Act, we conducted verifications of the information provided by the trading company SMC, and one of its suppliers, Jinma. We used standard verification procedures, including on-site inspection of the manufacturer's facilities, the examination of relevant sales and financial records, and the selection of original source documentation as exhibits. Our verification findings are detailed in the memoranda dated December 24, 2003, the public versions of which are in the Central Records Unit's Public File.

Although section 782(i)(2) of the Act requires the Department to conduct a verification of the information relied upon in revoking an order, as stated above, we are preliminarily denying LMC/LIMAC's request for revocation. For this reason, the Department has not conducted a verification of LMC/LIMAC.

**Separate Rates Determination**

The Department has treated the PRC as a non-market economy (NME) country in all previous antidumping cases. *See, e.g., Notice of Final Determination of Sales at Less than Fair Value: Refined Brown Aluminum Oxide (Otherwise known as Refined Brown Artificial Corundum or Brown Fused Alumina) from the People's Republic of China*, 68 FR 55589 (September 26, 2003). It is the Department's policy to assign all exporters of the merchandise subject to review that are located in NME countries a single antidumping duty rate unless an exporter can demonstrate an absence of governmental control, both in law (*de jure*) and in fact (*de facto*), with respect to its export activities. To establish whether an exporter is sufficiently independent of governmental control to be entitled to a separate rate, the Department analyzes the exporter using the criteria established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (*Sparklers*), as amplified in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*). Under the separate rates criteria established in these cases, the Department assigns separate rates to NME exporters only if they can demonstrate the absence of both *de jure* and *de facto* governmental control over their export activities.

**Absence of *De Jure* Control**

Evidence supporting, though not requiring, a finding of the absence of *de jure* governmental control over export activities includes: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *See Sparklers*, 56 FR at 20589.

In previous reviews of the HFHTs orders, the Department granted separate rates to Huarong, LMC/LIMAC, SMC, and TMC. *See, e.g., Heavy Forged Hand Tools From the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review and Determination Not To Revoke in Part*, 67 FR 57789 (September 12, 2002). However, it is the Department's policy to evaluate separate rates questionnaire responses each time a respondent makes a separate rates claim, regardless of whether the respondent received a separate rate in the past. *See Manganese Metal From the People's Republic of China, Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 63 FR 12441 (March 13, 1998). In the instant reviews, Huarong, LMC/LIMAC, SMC, and TMC submitted complete responses to the separate rates section of the Department's questionnaire. The evidence submitted in the instant reviews by these respondents includes government laws and regulations on corporate ownership, business licences, and narrative information regarding the companies' operations and selection of management. The evidence provided by Huarong, LMC/LIMAC, SMC, and TMC supports a finding of a *de jure* absence of governmental control over their export activities because: (1) there are no controls on exports of subject merchandise, such as quotas applied to, or licenses required for, exports of the subject merchandise to the United States; and (2) the subject merchandise does not appear on any government list regarding export provisions or export licensing.

**Absence of *De Facto* Control**

The absence of *de facto* governmental control over exports is based on whether the respondent: (1) Sets its own export prices independent of the government and other exporters; (2) retains the proceeds from its export sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) has the authority to negotiate

and sign contracts and other agreements; and (4) has autonomy from the government regarding the selection of management. *See Silicon Carbide*, 59 FR at 22587; *see Sparklers*, 56 FR at 20589; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995) (*Furfuryl Alcohol*).

In their questionnaire responses, Huarong, LMC/LIMAC, SMC, and TMC submitted evidence indicating an absence of *de facto* governmental control over their export activities. Specifically, this evidence indicates that: (1) Each company sets its own export prices independent of the government and without the approval of a government authority; (2) each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) each exporter has a general manager, branch manager or division manager with the authority to negotiate and bind the company in an agreement; (4) the general manager is selected by the board of directors or company employees, and the general manager appoints the deputy managers and the manager of each department and (5) foreign currency does not need to be sold to the government. Therefore, the Department has preliminarily determined that Huarong, LMC/LIMAC, SMC, and TMC have established *primae facie* that they qualify for separate rates under the criteria established by *Silicon Carbide* and *Sparklers*.

**Use of Facts Available**

Section 776(a)(2) of the Act, provides that, if an interested party (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested, subject to sections 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Furthermore, section 776(b) of the Act states that "{i}f the administrating authority finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority or the Commission, the administering authority or the Commission ..., in reaching the applicable determination under this title, may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available." *See also* Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act (URAA), H.R. Rep. No. 103–316 at 870 (1994).

In the instant reviews, Huarong, LMC/LIMAC, and TMC significantly impeded our ability to complete the review of the bars/wedges order, which we conducted pursuant to section 751 of the Act, and to impose the correct antidumping duties, as mandated by section 731 of the Act. In addition, some of the respondents failed to provide certain information that was requested by the Department in the reviews of the axes/adzes (Huarong, LMC/LIMAC, SMC, and the PRC-wide entity), bars/wedges (Huarong, SMC, TMC, and the PRC-wide entity), hammers/sledges (the PRC-wide entity), and picks/mattocks (SMC and PRC-wide entity) antidumping orders. As discussed below, although Huarong, LMC/LIMAC, SMC, and TMC are entitled to separate rates, we preliminarily determine that their failures warrant the use of AFA in determining dumping margins for their sales of merchandise subject to certain HFHTs orders.

**Huarong**

Prior to the instant period under review, Huarong entered into an agreement with a PRC company under which the PRC company would act as an "agent" for the vast majority of Huarong's U.S. sales of bars/wedges. Pursuant to this agreement, the "agent" supplied Huarong with blank invoices and packing lists, both of which were on the "agent's" letterhead and stamped by the "agent's" general manager. Huarong filled out these invoices and packing lists and used them when exporting subject bars/wedges to the United States during the POR. When making "agent" sales, Huarong conducted all of the negotiations with the U.S. customer regarding price and quantity, and arranged the foreign inland freight, international freight, and marine insurance associated with these sales. Additional proprietary information regarding these transactions is in the Memorandum from Thomas F. Futtner, Acting Office Director, to Holly A. Kuga, Acting Deputy Assistant Secretary, "Application of Adverse Facts Available to Shandong Huarong Machinery Corporation Ltd. with Respect to Bars/Wedges," dated March 1, 2004 (Huarong Bars/Wedges AFA Memorandum).

After reviewing the record of this review, we find that Huarong has continually misrepresented the true nature of its relationship with the "agent" during the POR. In its questionnaire responses, Huarong claimed that its relationship with the "agent" stemmed from a bona fide business arrangement whereby the "agent" provided commercial services in connection with Huarong's sales. However, only by issuing two supplemental questionnaires on this topic did the Department learn that the "agent" had no real commercial involvement in these sales. In fact, the "agent" was compensated by Huarong, not for commercial services normally associated with being a sales agent, but instead, for providing Huarong with blank invoices and packing lists, which Huarong used to make the vast majority of its sales to the United States. See Huarong Bars/Wedges AFA Memorandum.

Section 776(a)(2)(C) of the Act states that the Department may, if an interested party "significantly impedes a proceeding" under the antidumping statute, use facts otherwise available in reaching the applicable determination. In this case, Huarong's invoice scheme with its "agent" has impeded our ability to complete the administrative review, pursuant to section 751 of the Act, and impose the correct antidumping duties, as required by section 731 of the Act. Therefore, pursuant to section 776(a)(2)(C) of the Act, we find it appropriate to base Huarong's dumping margin for bars/wedges on facts available.

In selecting from among the facts available, pursuant to section 776(b) of the Act, an adverse inference is warranted when the Department has determined that a respondent has failed to cooperate by not acting to the best of its ability to comply with our request for information. In this case, an adverse inference is warranted because (1) Huarong misrepresented the nature of its arrangement with the "agent" by portraying the company as a bona fide agent for the vast majority of Huarong's sales of bars/wedges to the United States, (2) Huarong participated in a scheme that resulted in circumvention of the antidumping duty order, and (3) the existence of such a scheme during the POR undermined our ability to impose accurate antidumping duties, pursuant to our statutory mandate under section 731 of the Act. Moreover, section 776(b) of the Act indicates that an adverse inference may include reliance on information derived from the petition, the final determination in the less-than-fair-value (LTFV) investigation, any previous administrative review, or any other information placed on the record. As AFA, we are assigning to Huarong's

sales of bars/wedges the 139.31 percent PRC-wide rate for bars/wedges published in the most recently completed administrative review of this antidumping order. *See Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Final Results of Antidumping Duty Administrative Review of the Order on Bars and Wedges*, 68 FR 53347 (September 10, 2003) (*HFHTs Final Results for Eleventh Review*); *see* also Huarong Bars/Wedges AFA Memorandum.

**Jiangsu**

In its section A quantity and value chart, Jiangsu reported its U.S. sales of axes/adzes, bars/wedges, and hammers/sledges. *See* Jiangsu's April 21, 2003, shortened section A questionnaire response. On June 18, 2003, the Department issued sections C and D of the antidumping questionnaire to Jiangsu. Although Jiangsu's response to sections C and D of the questionnaire was due on July 25, 2003, the Department never received a response from this company. On August 4, 2003, the Department notified Jiangsu that its sections C and D questionnaire response was past due and requested that Jiangsu notify the Department if it had encountered unexpected difficulties in submitting its response. The Department never received a response to its August 4, 2003, letter.

The evidence on the record of this review establishes that, pursuant to section 776(a)(2)(A) of the Act, the use of total facts available is warranted in determining the dumping margins for Jiangsu's sales of axes/adzes, bars/wedges and hammers/sledges because Jiangsu failed to provide either the U.S. sales information, or the FOP information for these three classes or kinds of subject merchandise. *See* Memorandum from Thomas F. Futtner, Acting Office Director, to Holly A. Kuga, Acting Deputy Assistant Secretary, "Application of Adverse Facts Available to Jiangsu Guotai International Group Huatai Import & Export Company, Ltd.," dated March 1, 2004 (Jiangsu AFA Memorandum).

Additionally, the record shows that Jiangsu has failed to cooperate by not acting to the best of its ability within the meaning of section 776(b) of the Act. In reviewing the evidence on the record, the Department finds that Jiangsu failed to provide information necessary to allow the Department to calculate Jiangsu's dumping margin for its sales of axes/adzes, bars/wedges and hammers/sledges. The Department notified Jiangsu that it must report the U.S. sales and FOP data for the products subject to these three antidumping orders in its August 4, 2003 letter. Despite reporting quantities and values of U.S. sales under these orders, Jiangsu did not respond to the Department's section C and D general questionnaires. *See* June 8, 2003 Jiangsu section C and D questionnaire response. By not supplying the U.S. sales and FOP information regarding its sales of axes/adzes, bars/wedges, and hammers/sledges, Jiangsu failed to cooperate to the best of its ability. As Jiangsu has failed to cooperate to the best of its ability, we are using an adverse inference in selecting from among the facts available, pursuant to section 776(b) of the Act. *See* Jiangsu AFA Memorandum.

Pursuant to section 776(b) of the Act, the Department is preliminarily basing Jiangsu's dumping margin for sales of products subject to the antidumping orders on axes/adzes, bars/wedges, and hammers/sledges on AFA. Section 776(b) of the Act authorizes the Department to use, as AFA, information derived from the petition, the final determination in the LTFV investigation, any previous administrative review, or any other information placed on the record. Jiangsu has never established, in a prior segment of these proceedings, that it is entitled to a separate rate, and Jiangsu ceased to participate in this proceeding before the Department could issue a supplemental section A questionnaire addressing, among other things, Jiangsu's request for a separate rate. The information requested in the antidumping questionnaire is in the sole possession of the respondent, and could not be obtained otherwise. Thus, the Department is precluded from calculating a margin for Jiangsu or determining its eligibility for a separate rate. Because Jiangsu is not eligible for a separate rate, it is considered to be part of the PRC-wide entity.

Because Jiangsu failed to respond to our request for information and it is considered to be part of the PRC-wide entity, in accordance with sections 776(a)(2)(A) and (B), as well as section 776(b) of the Act, we are assigning total AFA to the PRC-wide entity. Section 776(b)(4) of the Act permits the Department to use as AFA information derived in the LTFV investigation or any prior review. Thus, in selecting an AFA rate, the Department's practice has been to assign respondents who fail to cooperate with the Department's requests for information the highest margin determined for any party in the LTFV investigation or in any administrative review. *See, e.g., Stainless Steel Plate in Coils from Taiwan; Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review*, 67 FR 5789 (February 7, 2002) (*Plate from Taiwan*) ("Consistent with Department practice in cases where a respondent fails to cooperate to the best of its ability, and in keeping with section 776(b)(3) of the Act, as adverse facts available, we have applied a margin based on the highest margin from any prior segment of the proceeding."). As AFA, we are assigning to the PRC-wide entity's sales of axes/adzes, bars/wedges, hammers/sledges, and picks/mattocks the rates of 55.74, 139.31, 45.42, and 98.77 percent, respectively, published in the most recently completed review of the HFHTs orders. *See HFHTs Final Results for Eleventh Review*. The rate identified for hammers/sledges is from the LTFV investigation. *See Final Determinations of Sales at Less Than Fair Value: Heavy Forged hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China*, 56 FR 241 (January 3, 1991) (*HFHTs Final LTFV Notice*). *See* also Jiangsu AFA Memorandum.

**LMC/LIMAC**

LMC/LIMAC reported its U.S. sales of axes/adzes in its section C questionnaire response. *See* LMC/LIMAC's August 11, 2003, section C and D questionnaire response at C–6, and Exhibit 2. LMC/LIMAC also reported the FOP information regarding these axes/adzes sales in its section D questionnaire response. *See* LMC/LIMAC's August 11, 2003, section C and D questionnaire response at Exhibits 11–13.

After reviewing LMC/LIMAC's questionnaire responses, the Department identified certain areas that required clarification and issued to a supplemental questionnaire to LMC/LIMAC covering sections A, C, and D of the questionnaire. In that supplemental questionnaire, we asked LMC/LIMAC various questions regarding the reported sales and FOP data for axes/adzes. LMC/LIMAC responded to all of these questions by stating that it is no longer participating in the axes/adzes review because the manufacturer of that merchandise is no longer willing to provide the requested information. *See* LMC/LIMAC's November 19, 2003, response at 6–7, 12–13, and 16.

The evidence on the record of this review establishes that, pursuant to section 776(a)(2)(A) of the Act, the use of total facts available is warranted in determining the dumping margin for LMC/LIMAC's sales of axes/adzes because LMC/LIMAC failed to provide supplemental sales and FOP information with respect to axes/adzes.

*See* Memorandum from Thomas F. Futtner, Acting Office Director, to Holly A. Kuga, Acting Deputy Assistant Secretary, "Application of Adverse Facts Available to Liaoning Machinery Import & Export Corporation and Liaoning Machinery Import & Export Corporation Limited with Respect to Axes/Adzes," dated March 1, 2004 (LMC/LIMAC AFA Memorandum for Axes/Adzes). Moreover, pursuant to section 776(a)(2)(D) of the Act, we find that total facts available is warranted because, by ceasing to participate, LMC/LIMAC has denied the Department the ability to verify the sales and FOP data that would be used to calculate its dumping margin. *See* LMC/LIMAC AFA Memorandum for Axes/Adzes.

Furthermore, the record shows that LMC/LIMAC failed to cooperate to the best of its ability, within the meaning of section 776(b) of the Act. In reviewing the evidence on the record, the Department finds that LMC/LIMAC failed to provide supplemental information necessary to allow the Department to accurately calculate EP and NV for LMC/LIMAC's sales of axes/adzes. Specifically, LMC/LIMAC stated that it stopped participating in the axes/adzes review, and failed to respond to supplemental questions related to its sales of axes, even though these questions involve information that is within LMC/LIMAC's control. For example, the Department requested a worksheet demonstrating how LMC/LIMAC calculated the sole reported price adjustment. LMC/LIMAC did not provide the worksheet requested even though the request did not require information from the uncooperative supplier factory. Regarding the FOP data, the Department notified LMC/LIMAC that it must "submit a separate section D response for each supplier/factory." Despite providing a separate section D response from its bars/wedges supplier, LMC/LIMAC reported that its supplier of axes/adzes refused to cooperate and did not provide the supplemental information requested by the Department. *See* November 19, 2003, LMC/LIMAC supplemental response at 12. By not responding to our requests for supplemental sales and FOP information for axes/adzes, LMC/LIMAC failed to cooperate to the best of its ability. As LMC/LIMAC has failed to cooperate to the best of its ability, we are using an adverse inference in selecting from among the facts available, pursuant to section 776(b) of the Act. *See* LMC/LIMAC AFA Memorandum for Axes/Adzes.

Pursuant to section 776(b) of the Act, the Department is preliminarily basing LMC/LIMAC's dumping margin for sales of products covered by the antidumping order on axes/adzes on AFA. Section 776(b) of the Act authorizes the Department to use, as AFA, information derived from the petition, the final determination in the LTFV investigation, any previous administrative review, or any other information placed on the record. As AFA, we are assigning to LMC/LIMAC's sales of axes/adzes the 55.74 PRC-wide rate for axes/adzes that was published in the most recently completed administrative review of this antidumping order. *See HFHTs Final Results for Eleventh Review.*

Additionally, prior to the instant period under review, LMC/LIMAC entered into an agreement with another PRC company under which LMC/LIMAC would act as an "agent" for certain U.S. sales of that company's bars/wedges products. Even though LMC/LIMAC was the "agent" for these sales, LMC/LIMAC had no part in negotiating the price and quantity with the U.S. customer, nor in arranging the foreign inland freight, brokerage and handling, Chinese customs clearance, and international freight associated with these sales. Instead, all of these functions were performed by the other company. Additional proprietary information regarding these transactions is in the Memorandum from Thomas F. Futtner, Acting Office Director, to Holly A. Kuga, Acting Deputy Assistant Secretary, "Application of Adverse Facts Available to Liaoning Machinery Import & Export Corporation and Liaoning Machinery Import & Export Corporation Limited with Respect to Bars/Wedges," dated March 1, 2004 (LMC/LIMAC AFA Memorandum for Bars/Wedges).

After reviewing the record of this review, we preliminarily find that LMC/LIMAC has continually misrepresented the true nature of its relationship with the other company during the POR. In its questionnaire responses, LMC/LIMAC claimed that its relationship with the other company stemmed from a bona fide business arrangement whereby LMC/LIMAC provided commercial services in connection with the other company's sales. However, only by issuing three supplemental questionnaires on this topic did the Department learn that LMC/LIMAC had no real commercial involvement in these sales. In fact, LMC/LIMAC was compensated by the other company, not for commercial services normally associated with being a sales agent, but instead for providing the other company with its invoices, which the other company used to make sales of subject merchandise to the United States. *See* LMC/LIMAC AFA Memorandum for Bars/Wedges.

Section 776(a)(2)(C) of the Act states that the Department may, if an interested party "significantly impedes a proceeding" under the antidumping statute, use facts otherwise available in reaching the applicable determination. In this case, LMC/LIMAC's participation in an invoice scheme with the other company has impeded our ability to complete the administrative review pursuant to section 751 of the Act, and impose the correct antidumping duties, as required by section 731 of the Act. Therefore, pursuant to section 776(a)(2)(C) of the Act, we find that it is appropriate to base LMC/LIMAC's dumping margin for bars/wedges on facts available.

In selecting from among the facts available, pursuant to section 776(b) of the Act, an adverse inference is warranted when the Department has determined that a respondent has failed to cooperate by not acting to the best of its ability to comply with a request for information. In this case, an adverse inference is warranted because (1) LMC/LIMAC misrepresented the nature of its arrangement with the other company by portraying itself as a bona fide sales agent for certain sales of bars/wedges made by the other company to the United States, (2) LMC/LIMAC participated in a scheme that resulted in circumvention of the antidumping duty order, and (3) the existence of such a scheme during the POR undermined our ability to impose accurate antidumping duties, pursuant to our statutory mandate under section 731 of the Act. Moreover, section 776(b) of the Act indicates that an adverse inference may include reliance on information derived from the petition, the final determination in the LTFV investigation, any previous administrative review, or any other information placed on the record. As AFA, we are assigning to LMC/LIMAC's sales of bars/wedges the 139.31 PRC-wide rate for bars/wedges published in the most recently completed administrative review of this antidumping order. *See HFHTs Final Results for Eleventh Review; see* also LMC/LIMAC AFA Memorandum for Bars/Wedges.

**SMC**

In its section A quantity and value chart, in addition to its section C questionnaire responses, SMC reported its U.S. sales of axes/adzes and picks/mattocks. *See* SMC's May 28, 2003, section A questionnaire response at Exhibit 1; *see* SMC's August 11, 2003, section C questionnaire response at

Exhibit 2. However, SMC did not report any FOP information regarding axes/adzes and picks/mattocks in its section D response. *See* August 11, 2003 SMC section D questionnaire response at Exhibit 12–13 (demonstrating the absence of FOP data for these two classes or kinds of subject merchandise).

In our September 11, 2003, supplemental questionnaire, the Department asked SMC several questions regarding its failure to report FOP data for axes/adzes and picks/mattocks. SMC responded by stating that, "{b}ecause SMC is unable to participate in the administrative reviews under the separate antidumping orders on axes/adzes and picks/mattocks, SMC has not reported data regarding the FOP for the axes/adzes and picks/mattocks categories." *See* SMC's October 3, 2003, section C and D supplemental response at 15. SMC also stated that its "suppliers of axes/adzes and picks/mattocks decided not to cooperate and without their cooperation, SMC is unable to supply the factors of production data." *Id.*

The evidence on the record of this review establishes that, pursuant to section 776(a)(2)(A) of the Act, the use of total facts available is warranted in determining the dumping margin for SMC's sales of axes/adzes and picks/mattocks because SMC failed to provide the FOP information for these two classes or kinds of subject merchandise. In its questionnaire and supplemental questionnaire responses, SMC failed to provide the FOP information requested in the Department's March 25, 2003, antidumping questionnaire and September 11, 2003, sections C and D supplemental questionnaire. *See* Memorandum from Thomas F. Futtner, Acting Office Director, to Holly A. Kuga, Acting Deputy Assistant Secretary, "Application of Adverse Facts Available to Shandong Machinery Import & Export Corporation," dated March 1, 2004 (SMC AFA Memorandum).

Moreover, the record shows that SMC has failed to cooperate by not acting to the best of its ability within the meaning of section 776(b) of the Act. In reviewing the evidence on the record, the Department finds that SMC failed to provide information necessary to allow the Department to calculate NV for SMC's sales of axes/adzes and picks/mattocks. The Department notified SMC that it must report its FOP data. Despite reporting FOP data from multiple factories for sales of other products subject to the HFHTs orders (*i.e.*, hammers/sledges and bars/wedges), SMC reported that its suppliers of axes/adzes and picks/mattocks refused to provide it with FOP data. *See* October 3, 2003 SMC section C and D supplemental response. By not supplying the FOP information for its sales of axes/adzes and picks/mattocks, SMC failed to cooperate to the best of its ability. As SMC has failed to cooperate to the best of its ability, we are using an adverse inference in selecting from among the facts available, pursuant to section 776(b) of the Act. *See* SMC AFA Memorandum.

Pursuant to section 776(b) of the Act, the Department is preliminarily basing SMC's dumping margin for sales of products covered by the antidumping orders on axes/adzes and picks/mattocks on AFA. Section 776(b) of the Act authorizes the Department to use, as AFA, information derived from the petition, the final determination in the LTFV investigation, any previous administrative review, or any other information placed on the record. As AFA, we are assigning to SMC's sales of axes/adzes and picks/mattocks the 55.74 and 98.77 percent rates for axes/adzes and picks/mattocks published in the most recently completed administrative review of these antidumping orders. *See HFHTs Final Results for Eleventh Review, see* also SMC AFA Memorandum.

**TMC**

Prior to the instant period under review, TMC entered into an agreement with another PRC company under which TMC would act as an "agent" for the majority of this company's U.S. sales of bars/wedges. Pursuant to this agreement, TMC supplied the company with blank invoices, which were on TMC's letterhead and stamped by TMC's general manager. The other company filled out these invoices and used them when exporting the majority of its subject bars/wedges to the United States during the POR. When acting as the "agent" for these sales, TMC had no part in negotiating the price and quantity with the U.S. customer, nor in arranging the foreign inland freight, international freight, and marine insurance associated with these sales. Additional proprietary information regarding these transactions is in the Memorandum from Thomas F. Futtner, Acting Office Director, to Holly A. Kuga, Acting Deputy Assistant Secretary, "Application of Adverse Facts Available to Tianjin Machinery Import and Export Corporation," dated March 1, 2004 (TMC AFA Memorandum).

After reviewing the record of this review, we preliminarily find that TMC has continually misrepresented the true nature of its relationship with the other company during the POR. In its questionnaire responses, TMC claimed that its relationship with the other company stemmed from a bona fide business arrangement whereby TMC provided commercial services in connection with the other company's sales. However, only by issuing three supplemental questionnaires on this topic did the Department learn that TMC had no real commercial involvement in these sales. In fact, TMC was compensated by the other company, not for commercial services normally associated with being a sales agent, but instead for providing the other company with blank invoices, which the other company used to make its sales to the United States. *See* TMC AFA Memorandum.

Section 776(a)(2)(C) of the Act states that the Department may, if an interested party "significantly impedes a proceeding" under the antidumping statute, use facts otherwise available in reaching the applicable determination. In this case, TMC's participation in an invoice scheme with the other company has impeded our ability to complete the administrative review, pursuant to section 751 of the Act, and impose the correct antidumping duties, as required by section 731 of the Act. Therefore, pursuant to section 776(a)(2)(C) of the Act, we find it is appropriate to base TMC's dumping margin for bars/wedges on facts available.

In selecting from among the facts available, pursuant to section 776(b) of the Act, an adverse inference is warranted when the Department has determined that a respondent has failed to cooperate by not acting to the best of its ability to comply with a request for information. In this case, an adverse inference is warranted because (1) TMC misrepresented the nature of its arrangement with the other company by portraying itself as a bona fide sales agent for the majority of the other company's sales of bars/wedges to the United States, (2) TMC participated in a scheme that resulted in circumvention of the antidumping duty order, and (3) the existence of such a scheme during the POR undermined our ability to impose accurate antidumping duties, pursuant to our statutory mandate under section 731 of the Act. Moreover, section 776(b) of the Act indicates that an adverse inference may include reliance on information derived from the petition, the final determination in the LTFV investigation, any previous administrative review, or any other information placed on the record. As AFA, we are assigning to TMC's sales of bars/wedges the 139.31 PRC-wide rate for bars/wedges published in the most recently completed administrative review of this antidumping order. *See*

*HFHTs Final Results for Eleventh Review; see* also TMC AFA Memorandum.

**PRC-Wide Entity**

As mentioned in the *Background* section above, the Department initiated these instant administrative reviews of the axes/adzes, bars/wedges, and hammers/sledges orders with respect to 93 PRC companies. We also initiated an administrative review of six PRC companies with respect to the picks/mattocks order. On March 26, 2003, we issued a shortened section A questionnaire to all of the companies identified in the notice of initiation. Although Jiangsu responded to our shortened and full section A questionnaires, this company did not respond to sections C or D of the questionnaire, and ceased participating in the instant reviews. As stated above, we have preliminarily not granted Jiangsu a separate rate and thus we consider it to be a part of the PRC-wide entity. Further, 77 of the 93 companies identified in our notice of initiation did not respond to our shortened section A questionnaire nor did these companies provide any information demonstrating that they are entitled to a separate rate. Thus, we consider these companies to be part of the PRC-wide entity.

Section 776(a)(2) of the Act provides that, if an interested party or any other person (A) withholds information that has been requested by the administering authority, or (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act, the Department shall, subject to section 782(d) of the Act, use the facts otherwise available in reaching the applicable determination under this title. Furthermore, under section 782(c) of the Act, a respondent has a responsibility not only to notify the Department if it is unable to provide the requested information but also to provide a full explanation as to why it cannot provide the information and suggest alternative forms in which it is able to submit the information. Because Jiangsu and these 77 companies did not establish their entitlement to a separate rate and failed to provide certain requested information, we find that, in accordance with sections 776(a)(2)(A) and (B) of the Act, it is appropriate to base the PRC-wide margin in these reviews on facts available. *See, e.g., Final Results of Antidumping Duty Administrative Review for Two Manufacturers/Exporters: Certain Preserved Mushrooms from the People's Republic of China*, 65 FR 50183, 50184 (August 17, 2000).

Section 776(b) of the Act provides that, if the Department finds that an interested party "has failed to cooperate by not acting to the best of its ability to comply with a request for information," the Department may use information that is adverse to the interests of the party as the facts otherwise available. Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." *See* SAA accompanying the URAA, H. Doc. No. 103–316, at 870 (1994). Section 776(b) of the Act authorizes the Department to use, as AFA, information derived from the petition, the final determination in the LTFV investigation, any previous administrative review, or any other information placed on the record.

Because Jiangsu and these 77 companies failed to respond to the Department's request for information and they are considered to be part of the PRC-wide entity, in accordance with sections 776(a)(2)(A) and (B), as well as section 776(b) of the Act, we are assigning total AFA to the PRC-wide entity. Section 776(b)(4) of the Act permits the Department to use as AFA information derived in the LTFV investigation or any prior review. Thus, in selecting an AFA rate, the Department's practice has been to assign respondents who fail to cooperate with the Department's requests for information the highest margin determined for any party in the LTFV investigation or in any administrative review. *See, e.g., Plate from Taiwan.* As AFA, we are assigning to the PRC-wide entity's sales of axes/adzes, bars/wedges, hammers/sledges, and picks/mattocks the rates of 55.74, 139.31, 45.42, and 98.77 percent, respectively. The rates selected for axes/adzes, bars/wedges, and picks/mattocks were published in the most recently completed review of the HFHTs orders. *See HFHTs Final Results for Eleventh Review.* The rate selected as AFA for hammers/sledges is from the LTFV investigation. *See HFHTs Final LTFV Notice.*

**Sales of Scrapers and Tampers by Huarong, SMC, and TMC**

On July 9, 2003, Huarong, SMC, and TMC asked the Department to provide "guidance" as to whether sales of scrapers and tampers should be reported to the Department. *See* respondents' July 9, 2003, submission at 2–3. On July 10, 2003, the Department replied that U.S. sales of scrapers with sale dates within the POR should be reported. At that time, the Department also noted that if the respondents disagree with our guidance, they could request a formal scope ruling pursuant to 19 CFR 351.225(c). *See* Letter from Ron Trentham, Acting Program Manager, to the respondents, dated July 10, 2003. On July 11, 2003, the Department informed the respondents that they should also report U.S. sales of tampers with sales dates within the POR, as tampers are specifically mentioned in the scope of the HFHTs orders. *See* Memorandum from Mark Manning, Case Analyst, to the File, "Tampers are identified as subject merchandise in the scope of the order," dated July 11, 2003.

Huarong reported its U.S. sales of scrapers in its section C questionnaire response and the FOP data for scrapers in its section D questionnaire response. After reviewing Huarong's responses, the Department issued a supplemental questionnaire to Huarong covering sections A, C, and D of the questionnaire. In that supplemental questionnaire, we asked Huarong to confirm that it reported all of its sales of subject merchandise. Moreover, we asked several questions regarding the sales and FOP information for scrapers that Huarong reported in its questionnaire responses. In its supplemental questionnaire response, Huarong noted that an interested party to these proceedings requested a scope inquiry as to whether scrapers are within the scope of the HFHTs orders. Because of this scope request, Huarong stated that it will not report any additional information regarding its U.S. sales of scrapers, nor the FOP data for scrapers, until the question of whether scrapers are within the scope of the HFHTs orders has been settled. *See* Huarong's November 21, 2003, submission at 2–3. We note that the only sales Huarong reported for the axes/adzes order are its sales of scrapers.

Furthermore, Huarong, SMC, and TMC stated in their response and supplemental responses to section C of the questionnaire that they did not report their sales of tampers with dates of sale within the POR. In addition, Huarong, SMC, and TMC refused to report the FOP data for tampers in their responses and supplemental responses to section D of the questionnaire. These respondents refused to provide the sales and FOP data regarding tampers because, as with scrapers, there is an ongoing scope inquiry on whether tampers

are within the scope of the HFHTs orders.[3]

The evidence on the record of this review establishes that, pursuant to section 776(a)(2) of the Act, the use of total facts available is warranted in determining the dumping margin for Huarong's sales of scrapers and tampers, in addition to SMC and TMC's sales of tampers, because these respondents refused to provide complete sales and FOP information for their sales of these products. *See* Memorandum from Thomas F. Futtner, Acting Office Director, to Holly A. Kuga, Acting Deputy Assistant Secretary, "Application of Adverse Facts Available to Sales of Scrapers and Tampers," dated March 1, 2004 (AFA Memorandum for Scrapers and Tampers). In their questionnaire and supplemental responses, these respondents refused to provide the requested information on scrapers and tampers because the Department has not yet issued a final ruling in the separate, on-going scope inquiries regarding these products. However, 19 CFR 351.225(l)(4) states that, "notwithstanding the pendency of a scope inquiry, if the Secretary considers it appropriate, the Secretary may request information concerning the product that is the subject of the scope inquiry for purposes of a review under this subpart." Thus, even though the Department has not yet issued its final scope rulings in response to these inquires, the Department may ask for the information regarding sales of these products during the course of an administrative review. Thus, it is appropriate to use facts available.

Moreover, the record shows that Huarong, SMC, and TMC failed to cooperate to the best of their ability, within the meaning of section 776(b) of the Act. In reviewing the evidence on the record, the Department finds that there is no information on the record indicating that Huarong, SMC, and TMC ever attempted to provide the sales information on tampers, nor did Huarong attempt to provide the additional information on scrapers requested by the Department, despite the fact that the sales information for scrapers and tampers is completely within their control. Moreover, Huarong failed to provide its FOP data for scrapers even though it is the producer of this merchandise. Although Huarong, SMC, and TMC do not produce tampers, none of these respondents provided any reason as to why the supplying factories for tampers would not provide the FOP data. Thus, Huarong, SMC, and TMC failed to provide information necessary to allow the Department to accurately calculate EP and NV for their respective sales of scrapers and tampers. By not responding to our requests for supplemental information for scrapers, and by providing no information whatsoever for tampers, these respondents failed to cooperate to the best of their ability. As Huarong, SMC, and TMC have failed to cooperate to the best of their ability, we are using an adverse inference in selecting from among the facts available, pursuant to section 776(b) of the Act. *See* AFA Memorandum for Scrapers and Tampers.

Pursuant to section 776(b) of the Act, the Department is preliminarily basing Huarong's dumping margin for products covered by the antidumping orders on axes/adzes and bars/wedges, in addition to SMC and TMC's dumping margin for products covered by the antidumping order on bars/wedges, on AFA. Section 776(b) of the Act authorizes the Department to use, as AFA, information derived from the petition, the final determination in the LTFV investigation, any previous administrative review, or any other information placed on the record. As AFA, we are assigning to Huarong's sales of products covered by the axes/adzes and bars/wedges orders the 55.74 and 139.31 PRC-wide rates for axes/adzes and bars/wedges published in the most recently completed administrative reviews of these antidumping orders. *See HFHTs Final Results for Eleventh Review.* For SMC and TMC's sales of products covered by the bars/wedges order, we are assigning the PRC-wide rate for bars/wedges of 139.31 percent published in *HFHTs Final Results for Eleventh Review.*

**Corroboration**

Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as facts available. Secondary information is defined as "{i}nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise." *See* SAA accompanying the URAA, H.R. Doc. No. 103–316 at 870 (1994) and 19 CFR 351.308(d).

The SAA further provides that the term "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. *See* SAA at 870. Thus, to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. Thus, in an administrative review, if the Department chooses, as total AFA, a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin. *See Heavy Forged Hand Tools From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review and Determination Not To Revoke in Part,* 67 FR 57789, 57791 (September 12, 2002).

All of the AFA rates selected above were calculated using information provided during the LTFV investigation or a past administrative review. Furthermore, none of these rates were judicially invalidated. Therefore, we consider these rates to be reliable. *See* the respective AFA memoranda identified above for further details.

When circumstances warrant, the Department may diverge from its standard practice of selecting as the AFA rate the highest rate in any segment of the proceeding. For example, in *Fresh Cut Flowers From Mexico; Final Results of Antidumping Duty Administrative Review,* 61 FR 6812 (February 22, 1996) (*Flowers from Mexico*), the Department did not use the highest margin in the proceeding as best information available (the predecessor to facts available) because that margin was based on another company's aberrational business expenses and was unusually high. *See Flowers from Mexico,* 61 FR 6812, at 6814. In other cases, the Department has not used the highest rate in any segment of the proceeding as the AFA rate because the highest rate was subsequently discredited, or the facts did not support its use. *See also Allegheny Ludlum Corp., et al.* v. *United States,* Slip Op 03–89 (July 24, 2003) at 22–26, currently on appeal, and *D & L Supply Co.* v. *United States,* 113 F.3d 1220, 1221 (Fed. Cir. 1997) (the Department will not use a margin that has been judicially invalidated). None of these unusual circumstances are present with respect to the rates being used here. Moreover, the rates selected for axes/adzes, bars/wedges, and picks/mattocks are the rates currently applicable to the PRC-wide entity.

[3] The Department initiated scope inquiries on tampers on August 4, 2003, and on scrapers on December 2, 2003. The final results of the inquiries are currently pending.

The rate selected as AFA for the PRC-wide entity's sales of hammers/sledges is from the LTFV investigation. As discussed in the AFA memorandum for Jiangsu, the previous PRC-wide rate for hammers/sledges of 27.71 percent has not encouraged cooperation. A review of the company-specific rates that have been calculated for hammers/sledges in prior administrative reviews indicates that there are no company-specific rates for hammers/sledges higher than the previous PRC-wide rate of 27.71 percent. The selected rate of 45.42 has relevance because it, and a nearly equivalent rate, were the PRC-wide rates for hammers/sledges during the first six administrative reviews of this order. *See* Jiangsu AFA Memorandum.

Accordingly, we have corroborated the AFA rates identified above in accordance with the requirement of section 776(c) of the Act that secondary information be corroborated (*i.e.*, that it have probative value). *See* the respective AFA memoranda identified above for further details.

**Export Price**

In accordance with section 772(a) of the Act, the Department calculated EPs for sales to the United States for the participating respondents receiving calculated rates because the first sale to an unaffiliated party was made before the date of importation and the use of constructed EP was not otherwise warranted. We calculated EP based on the price to unaffiliated purchasers in the United States. In accordance with section 772(c) of the Act, as appropriate, we deducted from the starting price to unaffiliated purchasers foreign inland freight, foreign warehousing, brokerage and handling, ocean freight, and marine insurance. For the respondents receiving calculated rates, each of these services was either provided by a NME vendor or paid for using a NME currency, with one exception. Thus, we based the deduction for these movement charges on surrogate values. *See* the *Normal Value* section of this notice for details regarding these surrogate values.

The one exception, referred to above, concerns ocean freight expenses incurred by SMC and TMC. These respondents, which are the only respondents receiving calculated rates, reported that during the POR they used both market economy ocean freight vendors, whom they paid in a market economy currency, and NME vendors. For SMC and TMC, we used, on a separate basis, the weighted average of each respondent's market economy ocean freight expenses to value ocean freight for all of their respective U.S. sales.

We valued foreign warehousing using the storage charges on export cargo stored in covered sheds at bulk terminals at Jawaharlal Nehru Port, as set by the Board of Trustees of Jawaharlal Nehru Port, effective March 17, 1997. We valued brokerage and handling and marine insurance using the rates reported in the public version of the questionnaire response in *Stainless Steel Wire Rod From India; Final Results of Administrative Review*, 63 FR 48184 (September 9, 1998) (*India Wire Rod*). The source used to value foreign inland freight is identified below in the *Normal Value* section of this notice. *See* Memorandum from Thomas Martin, Case Analyst, to the File, "Surrogate Values Used for the Preliminary Results of the Twelfth Administrative Reviews of Certain Heavy Forged Hand Tools From the People's Republic of China—February 1, 2002 through January 31, 2003," dated March 1, 2004 (Surrogate Value Memorandum).

To account for inflation or deflation between the time period that the freight, brokerage and handling, and insurance rates were in effect and the POR, we adjusted the rates using the wholesale price index (WPI) for India from the International Monetary Fund (IMF) publication, *International Financial Statistics*. *See* Surrogate Value Memorandum.

**Normal Value**

Section 773(c)(1) of the Act provides that the Department shall determine the NV using a FOP methodology if: (1) the merchandise is exported from an NME country; and (2) the available information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value (CV) under section 773(a) of the Act.

As discussed in the separate rates section, the Department considers the PRC to be an NME country. The Department has treated the PRC as an NME country in all previous antidumping proceedings. Furthermore, available information does not permit the calculation of NV using home-market prices, third-country prices, or CV under section 773(a) of the Act. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. We have no evidence suggesting that this determination should be changed. Therefore, we treated the PRC as an NME country for purposes of these reviews and calculated NV by valuing the FOP in a surrogate country.

Section 773(c)(4) of the Act requires the Department to value the NME producer's FOP, to the extent possible, in one or more market economy countries that (1) are at a level of economic development comparable to that of the NME country, and (2) are significant producers of comparable merchandise. The Department has determined that India, Pakistan, Indonesia, Sri Lanka, and the Philippines are countries comparable to the PRC in terms of overall economic development. *See* Memorandum from Ron Lorentzen, Acting Director, Office of Policy, to Thomas F. Futtner, Acting Office Director, AD/CVD Enforcement Group II, "Recommended Surrogate Countries," dated August 14, 2003.

India is comparable to the PRC in terms of per capita gross national product, the growth rate in per capita income, and the national distribution of labor. Furthermore, according to the *World Trade Atlas*, [4] published by Global Trade Information Services, Incorporated, India exported a significant quantity of merchandise to the United States classified under HTSUS subheadings 8205.20, 8205.59, 8201.30, and 8201.40, the subheadings applicable to subject hand tools. These exports indicate that India is a significant producer of comparable merchandise. Accordingly, where possible, we have calculated NV using publicly available Indian surrogate values for the PRC producers' FOP. Consistent with the *Final Determination of Sales at Less than Fair Value: Certain Automotive Replacement Glass Windshields From the People's Republic of China*, 67 FR 6482 (February 12, 2002) and accompanying Issues and Decision Memorandum at Comment 1, we excluded from the surrogate country import data used in our calculations imports from Korea, Thailand and Indonesia. *See* Surrogate Value Memorandum.

**Factors of Production**

In accordance with section 773(c) of the Act, we calculated NV based on FOP reported by the respondents for the POR. To calculate NV, we valued the reported FOP by multiplying the per-unit factor quantities by publicly available Indian surrogate values. In selecting surrogate values, we considered the quality, specificity, and contemporaneity of the available values. As appropriate, we adjusted the value of material inputs to account for delivery

[4] The *World Trade Atlas* is a secondary electronic source that contains Indian import data obtained from the publication *Monthly Statistics of the Foreign Trade of India*, Volume II—Imports (*Indian Import Statistics*).

costs. Where appropriate, we increased Indian surrogate values by surrogate inland freight costs. We calculated these inland freight costs using the reported distances from the PRC port to the PRC factory, or from the domestic supplier to the factory. This adjustment is in accordance with the United States Court of Appeals for the Federal Circuit's (CAFC) decision in *Sigma Corp.* v. *United States*, 117 F. 3d 1401, 1407–1408 (Fed.Cir. 1997). For those values not contemporaneous with the POR, we adjusted for inflation or deflation using the appropriate wholesale or producer price index published in the IMF's *International Financial Statistics*. We valued the FOP as follows:

(1) We valued direct materials used to produce HFHTs, packing materials, coal, acetylene gas, oxygen, and steel scrap generated from the production of HFHTs using, where available, the rupee per kilogram, per piece, or per cubic meter value of imports that entered India during the period February 2002 through January 2003, based upon data obtained from the *World Trade Atlas*. *See* Surrogate Value Memorandum.

(2) We valued labor using a regression-based wage rate, in accordance with 19 CFR 351.408(c)(3). This rate is identified on the Import Administration's Web site. (*See*, *http://ia.ita.doc.gov.wages/*). *See* Surrogate Value Memorandum.

(3) We derived ratios for factory overhead, selling, general and administrative (SG&A) expenses, and profit using information reported for 2,024 Public Limited Companies for the period 2001–2002, in the *Reserve Bank of India Bulletin* for October 2003. From this information, we were able to calculate factory overhead as a percentage of direct materials, labor, and energy expenses; SG&A expenses as a percentage of the total cost of manufacturing (TOTCOM); and profit as a percentage of the sum of TOTCOM and SG&A expenses. *See* Surrogate Value Memorandum.

Whenever possible, the Department will use producer-specific data to calculate financial ratios. Unlike industry-specific data, which tends to be broader in terms of merchandise included, product-specific data obtained from specific producers of merchandise identical or similar to the subject merchandise pertains directly to the subject merchandise. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium in Granular Form From the People's Republic of China*, 66 FR 49345 (September 27, 2001), and accompanying Issues and Decision Memorandum at Comment 3. However, when the Department and the parties are unable to obtain surrogate information for valuing overhead, SG&A, and profit from manufacturers of merchandise identical or comparable to the subject merchandise, the Department must rely upon surrogate information derived from broader industry groupings. *See Notice of Final Results of New Shipper Review: Petroleum Wax Candles from the People's Republic of China*, 67 FR 41395 (June 18, 2002), and accompanying Issues and Decision Memorandum, at Comment 6.

In the instant reviews, neither the petitioner nor the respondents have placed any financial statements on the record. Moreover, the Department has been unable to locate financial statements specific to hand tools producers in India. Therefore, the Department is using broader financial data from the *RBI Bulletin* to calculate the financial ratios. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Non-Malleable Cast Iron Pipe Fittings from the People's Republic of China*, 68 FR 7765 (February 18, 2003) and the accompanying Issues and Decision Memorandum at Comment 4; *Final Results of Antidumping New Shipper Review: Potassium Permanganate from the People's Republic of China*, 66 FR 46775 (September 7, 2001), and the accompanying Issues and Decision Memorandum, at Comment 20; *Final Results and Partial Rescission of Antidumping Duty Administrative Review and Determination Not To Revoke in Part: Heavy Forged Hand Tools from the People's Republic of China*, 66 FR 48026 (September 17, 2001), and the accompanying Issues and Decision Memorandum at Comment 18; *Notice of Initiation of Antidumping Duty Investigation: Lawn and Garden Steel Fence Posts From the People's Republic of China*, 67 FR 37388, 37391 (May 29, 2002 ), and the accompanying Issues and Decision Memorandum, at Comment 6.

(4) We valued electricity using 2001–2002 data from the *Annual Report on The Working of State Electricity Boards & Electricity Departments*, published in May 2002 by the Power & Energy Division of the Planning Commission of the Government of India. We used the average tariff rate for Indian industry, as opposed to the commercial tariff rate or agricultural tariff rate. *See* Surrogate Value Memorandum.

(5) We used the following sources to value truck and rail freight services incurred to transport direct materials, packing materials, and coal from the suppliers of the inputs to the factories producing HFHTs:

*Truck Freight*: We valued road freight services using the rates used by the Department in the *Notice of Final Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People's Republic of China*, 65 FR 33805 (May 25, 2000). *See* Surrogate Value Memorandum.

*Rail Freight:* We valued rail freight services using average 2001–2002 rates published in the Railway Budget 2003–2004 by the *Reserve Bank of India Bulletin*, on May 19, 2003. *See* Surrogate Value Memorandum.

**Preliminary Results of the Review**

As a result of our reviews, we preliminarily determine that the following margins exist for the period February 1, 2002 through January 31, 2003:

| Manufacturer/Exporter | Period | Margin (percent) |
|---|---|---|
| Shandong Huarong Machinery Corporation Limited (Huarong): | | |
| Axes/Adzes | 2/1/02–1/31/03 | 55.74 |
| Bars/Wedges | 2/1/02–1/31/03 | 139.31 |
| Liaoning Machinery Import & Export Corporation (LMC)/ Liaoning Machinery Import & Export Corporation Ltd. (LIMAC): | | |
| Axes/Adzes | 2/1/02–1/31/03 | 55.74 |
| Bars/Wedges | 2/1/02–1/31/03 | 139.31 |
| Shandong Machinery Import & Export Corporation (SMC): | | |
| Axes/Adzes | 2/1/02–1/31/03 | 55.74 |
| Bars/Wedges | 2/1/02–1/31/03 | 139.31 |
| Hammers/Sledges | 2/1/02–1/31/03 | 0.02 |
| Picks/Mattocks | 2/1/02–1/31/03 | 98.77 |

| Manufacturer/Exporter | Period | Margin (percent) |
|---|---|---|
| Tianjin Machinery Import & Export Corporation (TMC): | | |
| Axes/Adzes | 2/1/02–1/31/03 | 10.49 |
| Bars/Wedges | 2/1/02–1/31/03 | 139.31 |
| Hammers/Sledges | 2/1/02–1/31/03 | 6.46 |
| Picks/Mattocks | 2/1/02–1/31/03 | 4.76 |
| PRC-Wide Entity: | | |
| Axes/Adzes | 2/1/02–1/31/03 | 55.74 |
| Bars/Wedges | 2/1/02–1/31/03 | 139.31 |
| Hammers/Sledges | 2/1/02–1/31/03 | 45.42 |
| Picks/Mattocks | 2/1/02–1/31/03 | 98.77 |

**Public Comment**

The Department will disclose to parties to this proceeding the calculations performed in reaching the preliminary results within ten days of the date of announcement of the preliminary results. An interested party may request a hearing within 30 days of publication of the preliminary results. *See* 19 CFR 351.310(c). Interested parties may submit written comments (case briefs) within 30 days of publication of the preliminary results and rebuttal comments (rebuttal briefs), which must be limited to issues raised in the case briefs, within five days after the time limit for filing case briefs. *See* 19 CFR 351.309(c)(1)(ii) and 19 CFR 351.309(d). Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, (2) a brief summary of the argument and (3) a table of authorities. Further, the Department requests that parties submitting written comments provide the Department with a diskette containing the public version of those comments. We will issue a memorandum identifying the date of a hearing, if one is requested. Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act, the Department will issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their comments, within 120 days of publication of the preliminary results. The assessment of antidumping duties on entries of merchandise covered by this review and future deposits of estimated duties shall be based on the final results of this review.

**Assessment Rates**

Upon completion of these administrative reviews, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), for the respondents receiving calculated dumping margins, we calculated importer-specific per-unit duty assessment rates based on the ratio of the total amount of the dumping duties calculated for the examined sales to the total quantity of those same sales. These importer-specific per-unit rates will be assessed uniformly on all entries of each importer that were made during the POR. In accordance with 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the importer-specific assessment rate is *de minimis* (*i.e.*, less than 0.5 percent *ad valorem*). For all shipments of subject merchandise for the four antidumping orders covering HFHTs from the PRC, exported by the respondents and imported by entities not identified by the respondents in their questionnaire responses, we will instruct CBP to assess antidumping duties at the cash deposit rate in effect on the date of the entry. Lastly, for the respondents receiving dumping rates based upon AFA, the Department, upon completion of these reviews, will instruct CBP to liquidate entries according to the AFA ad valorem rate. The Department will issue appraisement instructions directly to CBP upon the completion of the final results of these administrative reviews.

**Cash Deposit Requirements**

The following deposit requirements will be effective upon publication of the final results of these administrative reviews for all shipments of HFHTs from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies named above will be the rates for those firms established in the final results of these administrative reviews; (2) for any previously reviewed or investigated PRC or non-PRC exporter, not covered in these reviews, with a separate rate, the cash deposit rate will be the company-specific rate established in the most recent segment of these proceedings; (3) for all other PRC exporters, the cash deposit rates will be the PRC-wide rates established in the final results of these reviews; and (4) the cash deposit rate for any non-PRC exporter of subject merchandise from the PRC who does not have its own rate will be the rate applicable to the PRC exporter that supplied the non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative reviews.

**Notification to Interested Parties**

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this determination in accordance with sections 751(a)(1) and 777(I)(1) of the Act.

Dated: March 1, 2004.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

[FR Doc. 04–5385 Filed 3–9–04; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–863]**

### Honey from the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** On January 22, 2004, the Department of Commerce (the Department) published in the **Federal Register** (69 FR 3117) a notice

announcing the initiation of the administrative review of the antidumping duty order on honey from the People's Republic of China. The period of review (POR) is December 1, 2002, to November 30, 2003. This review is now being rescinded for Anhui Native Produce Import & Export Corp., ("Anhui Native"), and Foodworld International Club, Ltd. ("Foodworld") because the requesting party withdrew its request.

**EFFECTIVE DATE:** March 10, 2004.

**FOR FURTHER INFORMATION CONTACT:** Helen Kramer or Abdelali Elouaradia, Enforcement Group III, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Room 7866, Washington, D.C. 20230; telephone (202) 482–0405 or (202) 482–1374, respectively.

**SUPPLEMENTARY INFORMATION:**

**Scope of Review**

The merchandise under review is honey from the PRC. The products covered are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight, and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form. The merchandise under review is currently classifiable under item 0409.00.00, 1702.90.90 and 2106.90.99 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under review is dispositive.

**Background**

On December 10, 2001, the Department of Commerce (the Department) published in the **Federal Register** an antidumping duty order covering honey from the People's Republic of China (PRC). *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order; Honey from the People's Republic of China*, 66 FR 63670 (December 10, 2001). On December 2, 2003, the Department published a *Notice of Opportunity to Request an Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation*, 68 FR 67401. On December 31, 2003, the American Honey Producers Association and the Sioux Honey Association (collectively, petitioners), requested, in accordance with section 351.213(b) of the Department's regulations, an administrative review of the antidumping duty order on honey from the PRC covering the period December 1, 2002, through November 30, 2003.

The petitioners requested that the Department conduct an administrative review of entries of subject merchandise made by 20 Chinese producers/exporters, which included Anhui Native and Foodworld. On January 14, 2004, the petitioners filed a letter withdrawing their request for review of Henan Native Produce and Animal By–Products Import & Export Company, High Hope International Group Jiangsu Foodstuffs Import & Export Corp., Jinan Products Industry Co., Ltd., and Native Produce and Animal Import & Export Co. On January 22, 2003, the Department initiated the review for the remaining 16 companies. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 68 FR 3009. The petitioners subsequently withdrew their request for review of Foodworld and Anhui Native on February 13, 2004 and February 18, 2004, respectively.

**Rescission of Review**

The applicable regulation, 19 CFR 351.213(d)(1), states that if a party that requested an administrative review withdraws the request within 90 days of the publication of the notice of initiation of the requested review, the Secretary will rescind the review. The petitioners withdrew their review request with respect to Anhui Native and Foodworld within the 90–day deadline, in accordance with 19 CFR 351.213(d)(1). Since the petitioners were the only party to request an administrative review of Anhui Native and Foodworld, we are rescinding this review of the antidumping duty order on honey from the PRC covering the period December 1, 2002, through November 30, 2003, with respect to Anhui Native and Foodworld.

This notice is issued and published in accordance with sections 751 and 777(i) of the Act and 19 CFR 351.213(d)(4).

Dated: March 2, 2004.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

[FR Doc. 04–5383 Filed 3–9–04; 8:45 am]

**BILLING CODE 3510–DS–S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–337–804, A–533–813, A–560–802, A–570–851]**

### Certain Preserved Mushrooms from Chile, India, Indonesia and the People's Republic of China; Final Results of Expedited Sunset Reviews of Antidumping Duty Orders

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Final Results of Expedited Sunset Reviews of Antidumping Duty Orders on Certain Preserved Mushrooms from Chile, India, Indonesia, and the People's Republic of China.

**SUMMARY:** On August 1, 2003, the Department of Commerce ("the Department") published the notice of initiation of sunset reviews on Certain Preserved Mushrooms from Chile, India, Indonesia, and the People's Republic of China. On the basis of the notice of intent to participate, and the adequate substantive comments filed on behalf of a domestic interested party and inadequate response (in this case, no response) from respondent interested parties, we determined to conduct expedited (120–day) sunset reviews. As a result of these reviews, we find that revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping at the levels listed below in the section entitled "Final Results of Review."

**EFFECTIVE DATE:** March 10, 2004.

**FOR FURTHER INFORMATION CONTACT:** Alessandra Cortez or Ozlem Koray, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone: (202) 482–5925 or (202) 482–3675.

**SUPPLEMENTARY INFORMATION:**

**Background**

On August 1, 2003, the Department published the notice of initiation of sunset reviews of the antidumping duty orders on Certain Preserved Mushrooms from Chile, India, Indonesia, and the People's Republic of China pursuant to section 751(c) of the Tariff Act of 1930, as amended (the "Act").[1] The Department received the Notices of Intent to Participate on behalf of a domestic interested party, the Coalition

[1] *Initiation of Five-Year (Sunset) Reviews*, 68 FR 45219 (August 1, 2003)

for Fair Preserved Mushroom Trade (collectively the "Coalition")[2], within the deadline specified in section 351.218(d)(1)(i) of the *Department's Regulations (Sunset Regulations)*. The Coalition claimed interested party status under Section 771(9)(C) of the Act as a U.S. producer of a domestic like product. We received complete substantive responses in the sunset reviews from the Coalition within the 30–day deadline specified in the *Department's Regulations* under section 351.218(d)(3)(i).

We did not receive a substantive response from any respondent interested parties to these proceedings. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C), the Department conducted expedited, 120–day reviews of these antidumping duty orders.

**Scope of Review**

The products covered under the Certain Preserved Mushrooms orders are imported whole, sliced, diced, or as stems and pieces. The "preserved mushrooms" covered under the orders are the species *Agaricus bisporus* and *Agaricus bitorquis*. "Preserved mushrooms" refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers, including but not limited to cans or glass jars in a suitable liquid medium, including but not limited to water, brine, butter or butter sauce. Included within the scope of these orders are "brined" mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing. Also included within the scope of these orders, as of June 19, 2000, are marinated, acidified, or pickled mushrooms containing less than 0.5 percent acetic acid.

Excluded from the scope of these orders are the following: (1) all other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including "refrigerated" or "quick blanched mushrooms≥; (3) dried mushrooms; and (4) frozen mushrooms.The merchandise subject to these orders were previously classifiable under subheadings 2003.10.0027, 2003.10.0031, 2003.10.0037, 2003.10.0043, 2003.10.0047, 2003.10.0053, and 0711.90.4000 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these orders is dispositive. As of January 1, 2002, the HTSUS codes are as follows: 2003.10.0127, 2003.10.0131, 2003.10.0137, 2003.10.0143, 2003.10.0147, 2003.10.0153, 0711.51.0000.

**Analysis of Comments Received**

All issues raised in these cases by the Coalition are addressed in the "Issues and Decision Memorandum" ("Decision Memo") from Ronald K. Lorentzen, Acting Director, Office of Policy, Import Administration, to James J. Jochum, Assistant Secretary for Import Administration, dated March 3, 2004, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail if the orders were to be revoked. Parties can find a complete discussion of all issues raised in these reviews and the corresponding recommendations in this public memorandum, which is on file in room B–099 of the main Commerce Building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at http://ia.ita.doc.gov/frn, under the heading "March 2004." The paper copy and electronic version of the Decision Memorandum are identical in content.

**Final Results of Review**

We determine that revocation of the antidumping duty orders on Certain Preserved Mushrooms from Chile, India, Indonesia, and the People's Republic of China would be likely to lead to continuation or recurrence of dumping at the following percentage weighted–average margins:

| Chile Manufacturers/Exporters | Weighted Average Margin Percent |
|---|---|
| Nature's Farm Products (Chile) S.A. | 148.51 |
| Ravine Foods | 148.51 |
| All Others | 148.51 |

| India Manufacturers/Exporters | Weighted Average Margin Percent |
|---|---|
| Agro Dutch Foods Ltd | 6.28 |
| Ponds (India) Ltd | 14.91 |
| Alpine Biotech Ltd | 243.87 |
| Mandeep Mushrooms Ltd | 243.87 |
| All Others | 11.30 |

| Indonesia Manufacturers/Exporters | Weighted Average Margin Percent |
|---|---|
| PT Dieng Djaya/PT Surya Jaya Abadi Perkasa | 7.94 |
| PT Zeta Agro Corporation | *revoked |
| All Others | 11.26 |

*Effective as of February 1, 2002, the antidumping duty order with respect to PT Zeta Agro Corporation was revoked. See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation Opportunity To Request Administrative Review, 67 FR 4549 (February 1, 2002).

| PRC Manufacturers/Exporters | Weighted Average Margin Percent |
|---|---|
| China Processed Food I&E Co./Xiamen Jiahua I&ETrading Company, Ltd . | 121.47 |
| Tak Fat Trading Co | 162.47 |

[2] The Coalition includes L. K. Bowman, Inc., Monterey Mushrooms Inc., Mushroom Canning Company, and Sunny Dell Foods Inc.

| PRC Manufacturers/Exporters | Weighted Average Margin Percent |
|---|---|
| Shenzhen Cofry Cereals, Oils, & Foodstuffs Co., Ltd | 151.15 |
| Gerber (Yunnan) Food Co | 198.63[3] |
| Jiangsu Cereals, Oils & Foodstuffs Group Import & Export Corporation | 142.11 |
| Fujian Provincial Cereals, Oils & Foodstuffs I&E Corp | 142.11 |
| Putian Cannery Fujian Province | 142.11 |
| Xiamen Gulong I&E Co., Ltd | 142.11 |
| General Canned Foods Factory of Zhangzhou | 142.11 |
| Zhejiang Cereals, Oils & Foodstuffs I&E Corp | 142.11 |
| Shanghai Foodstuffs I&E Corp142.11 Canned Goods Co. of Raoping | 142.11 |
| PRC–wide Rate | 198.63 |

[3] In the more recent administrative review of certain preserved mushrooms from the People's Republic of China, the Department applied an adverse facts available rate for Gerber (Yunnan) Co., of 198.63 which differs from the rate calculated for Gerber in the underlying investigation. *See Certain Preserved Mushrooms From the People's Republic of China: Final Results and Partial Rescission of the New Shipper Review and Final Results and Partial Rescission of the Third Antidumping Duty Administrative Review*, 68 FR 41304 (July 11, 2003)

This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing the results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: March 3, 2004.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 04–5382 Filed 3–9–04; 8:45 am]

**BILLING CODE 3510–DS–S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–428–825]**

### Stainless Steel Sheet and Strip in Coils from Germany; Antidumping Duty Administrative Review; Extension of Time Limit for Preliminary Results

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of extension of time limits.

**SUMMARY:** The Department of Commerce (the Department) is extending the time limits for the preliminary results of the 2002–2003 administrative review of the antidumping duty order on stainless steel sheet and strip in coils from Germany. This review covers one manufacturer/exporter of the subject merchandise to the United States and the period July 1, 2002 through June 30, 2003.

**EFFECTIVE DATE:** March 10, 2004.

**FOR FURTHER INFORMATION CONTACT:** Patricia Tran at (202) 482–1121 or Robert James at (202) 482–0649, Antidumping and Countervailing Duty Enforcement Group III, Office Eight, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:** On August 22, 2003, in response to requests from the respondent and petitioners, we published a notice of initiation of this administrative review in the **Federal Register**. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 68 FR 50750 (August 22, 2003). Pursuant to the time limits for administrative reviews set forth in section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Tariff Act), the current deadlines are April 1, 2004 for the preliminary results and July 30, 2004, for the final results. It is not practicable to complete this review within the normal statutory time limit due to a number of significant case issues such as: the reporting of downstream sales, and the reporting of physical product characteristics. Therefore, the Department is extending the time limits for completion of the preliminary results until July 30, 2004 in accordance with section 751(a)(3)(A) of the Tariff Act. The deadline for the final results of this review will continue to be 120 days after publication of the preliminary results.

This extension is in accordance with section 751(a)(3)(A) of the Tariff Act.

Dated: March 3, 2004.

**Joseph A. Spetrini,**

*Deputy Assistant Secretary for Import Administration, Group III.*

[FR Doc. 04–5386 Filed 3–9–04; 8:45 am]

**BILLING CODE 3510–DS–P**

## COMMODITY FUTURES TRADING COMMISSION

### Fees for Product Review and Approval

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Annual update of fees for product approval.

**SUMMARY:** The Commission charges fees to designated contract markets and registered derivatives transaction execution facilities to recover the costs of its review of requests for approval of products. The calculation of the fees to be charged for the upcoming year is based on an average of actual program costs, as explained below. The new fee schedule is set forth below.

**EFFECTIVE DATE:** March 10, 2004.

**FOR FURTHER INFORMATION CONTACT:** Richard A. Shilts, Deputy Director for Market and Product Review, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, (202) 418–5260.

**SUPPLEMENTARY INFORMATION:**

#### I. Summary of Fees

Fees charged for processing requests for product review and approval:

*Single Applications*

- A single futures contract or an option on a physical—$6,000.
- A single option on a previously-approved futures contract—$1,000.
- A combined submission of a futures contract and an option on the same futures contract—$6,500.

*Multiple Applications*

For multiple contract filings containing related contracts, the product review and approval fees are:

- A submission of multiple related futures contracts—$6,000 for the first contract, plus $600 for each additional contract;
- A submission of multiple related options on futures contracts—$1,000 for

the first contract, plus $100 for each additional contract;

• A combined submission of multiple futures contracts and options on those futures contracts—$6,500 for the first combined futures and option contract, plus $650 for each additional futures and option contract.

## II. Background Information

*1. General*

The Commission recalculates each year the fees it charges with the intention of recovering the costs of operating programs.[1] All costs are accounted for by the Commission's Management Accounting Structure Codes (MASC) system operated according to a government-wide standard established by the Office of Management and Budget. The fees are set each year based on historical program costs, plus an overhead factor.

*2. Overhead Rate*

The fees charged by the Commission are designed to recover program costs, including direct labor costs and overhead. The overhead rate is calculated by dividing total Commission-wide direct program labor costs into the total amount of the Commission-wide overhead pool. For this purpose, direct program labor costs are the salary costs of personnel working in all Commission programs. Overhead costs consist generally of the following Commission-wide costs: Indirect personnel costs (leave and benefits), rent, communications, contract services, utilities, equipment, and supplies. This formula has resulted in the following overhead rates for the most recent three years (rounded to the nearest whole percent): 117 percent for fiscal year 2001, 129 percent for fiscal year 2002, and 113 percent for fiscal year 2003. These overhead rates are applied to the direct labor costs to calculate the costs of reviewing contract approval requests.

*3. Processing Requests for Contract Approval*

Calculations of the fees for processing requests for product review and approval have become more refined over the years as the types of contracts being reviewed have changed.

On August 23, 1983, the Commission established a fee for Contract Market Designation (48 FR 38214). Prior to its recent amendment, the Commodity Exchange Act (Act) provided for "designation" of each new contract as a "contract market." The Commodity Futures Modernization Act (CFMA) amended the Act to limit the concept of "contract market designation" to the approval of certain markets or trading facilities on which futures and options are traded, as opposed to approval of a specific contract or product. Commission rules that implemented the CFMA, therefore, charged a fee for the contract review where approval has been requested by a designated contract market or registered derivatives transaction execution facility (DTF). No fee is charged for the initial designation of a contract market or registration of a DTF.

The fee, as originally adopted in 1983, was based on a three-year moving average of the actual costs expended and the number of contracts reviewed by the Commission during that period. The formula for determining the fee was revised in 1985. At that time, most designation applications were for futures contracts and no separate fee was set for option contracts.

In 1992, the Commission reviewed its data on the actual costs for reviewing applications for both futures and option contracts and determined that the percentage of applications pertaining to options has increased and that the cost of reviewing a futures contract designation application was much higher than the cost of reviewing an application for an option contract. The Commission also determined that when applications for a futures contract and an option on that futures contract are submitted simultaneously, the cost is much lower than when the contracts are separately reviewed. To recognize this cost difference, three separate fees were established: One for futures; one for options; and one for combined futures and option contract applications (57 FR 1372, Jan. 14, 1992).

The Commission refined its fee structure further in fiscal year 1999 to recognize the unique processing cost characteristics of a class of contracts—cash-settled based on an index of non-tangible commodities. The Commission determined to charge a reduced fee for related simultaneously submitted contracts for which the terms and conditions of all contracts in the filing are identical, except in regard to a specified temporal or spatial pricing characteristic or the multiplier used to determine the size of each contract. Contracts on major currencies (defined as the Australian dollar, British pound, Euro (and its component currencies), Japanese yen, Canadian dollar, Swiss franc, Mexican peso, New Zealand dollar, Swedish krona, and the Norwegian krone) (including contracts based on currency cross rates) are also eligible for the reduced multiple contract fees. The Commission determined that a 10 percent marginal fee for additional contracts in a filing would be appropriate for simultaneously submitted contracts eligible for the multiple contract filing fee.

In 2001, Congress passed the CFMA which provided that exchanges no longer need to obtain prior Commission approval before listing a futures or option contract for trading. Under the CEA as amended by the CFMA, exchanges can list new products under certification procedures, whereby the exchange files notice with the Commission no later than the day before the new product is to be listed for trading. The filing must include the rules of the new products as well as a certification that the product complies with all requirements of the Act and Commission regulations. The CFMA provides exchanges with the right to request Commission approval of new products. A request for approval may be made in lieu of certification, or it may be made in addition to a certification. The Commission's filing fee for new products applies only to new products for which an exchange has requested Commission approval.

Most new products submitted to the Commission since 2001 have been filed under certification procedures. This has had the effect of dramatically reducing the number of new product approvals included in the three-year average upon which the fee computations traditionally were made. In some cases, the number of contracts included in the calculation may be too small to be representative of actual processing costs. Accordingly, the Commission has revised its fee calculation procedure to reflect this reality and to preclude the setting of fees that may be greater than actual costs. The Commission believes, that, for a fee to be representative of actual costs, it should include actual processing costs for 20 or more contracts. Accordingly, in cases where the number of new product approvals included in the three-year moving average, for either futures or options, is fewer than 20 contracts, the fee will not be changed but will remain at the prior year's level. The Commission believes that the prior year's fee would be equal to or less than actual costs given increased salary levels and overhead over time.

Commission staff compiled data on the actual number of contract approval requests reviewed and the hours worked on processing these approval requests

[1] *See* Section 237 of the Futures Trading Act of 1982, 7 USC 16a and 31 USC 9701. For a broader discussion of the history of Commission fees, *see* 52 FR 46070 (Dec. 4, 1987).

for the past three fiscal years. The calculations revealed that the number of contracts that would be included in the three-year moving averages were 22 futures contracts but only one option contract. Accordingly, for options, the Commission is not revising the option contract approval fee for 2004, consistent with the policy noted above. For the 22 futures contracts, a review of actual costs of processing these contract approval requests reveal that the average cost over the period was $6,000 per contract, including overhead.

In accordance with its regulations as codified at 17 CFR Part 40 Appendix B, the Commission has determined that the fee for an approval request of a futures contract will be set at $6,000 and the fee for an approval request of an option contract will remain at $1,000. The fee for simultaneously submitted futures contracts and option contracts on those futures contracts and the fees for filings containing multiple cash-settled indices on non-tangible commodities have been set as indicated in the schedule set forth in the *Summary of Fees* above.

### III. Cost-Benefit Analysis

Section 15 of the Act, as amended by section 119 of the CFMR, requires the Commission to consider the costs and benefits of its action before issuing a new regulation under the Act. Section 15 does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the proposed regulation outweigh its costs. Rather, section 15 simply requires the Commission to consider the costs and benefits of its action, in light of five broad areas of market and public concern: protection of market participants and the public; efficiency, competitiveness, and financial integrity of futures markets; price discovery; sound risk management practices; and other public interest considerations. Accordingly, the Commission could in its discretion give greater weight to any one of the five enumerated areas of concern and could in its discretion determine that, notwithstanding its costs, a particular rule was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

The submission of new products for Commission review and approval by designated contract markets or DTEFs is voluntary. The Commission has therefore concluded that those entities choosing to make such submissions find that the benefits of doing so equal or exceed the fees, which, as explained above, are derived from the Commission's actual processing costs.

### IV. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 USC 601, *et seq.*, requires agencies to consider the impact of rules on small business. The fees implemented in this release affect contract markets and registered DTEFs. The Commission has previously determined that contract markets and registered DTEFs are not "small entities" for purposes of the Regulatory Flexibility Act. Accordingly, the Chairman, on behalf of the Commission, certifies pursuant to 5 USC 605(b), that the fees implemented here will not have a significant economic impact on a substantial number of small entities.

Issued in Washington, DC, on March 2, 2004, by the Commission.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 04–5102 Filed 3–9–04; 8:45 am]

BILLING CODE 6351–01–M

## COMMODITY FUTURES TRADING COMMISSION

## Fees for Reviews of the Rule Enforcement Programs of Contract Markets and Registered Futures Association

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Establish a new schedule of fees.

**SUMMARY:** The Commission charges fees to designated contract markets and the National Futures Association (NFA) to recover the costs incurred by the Commission in the operation of a program which provides a service to these entities. The fees are charged for the Commission's conduct of its program of oversight of self-regulatory rule enforcement programs (17 CFR part 1, appendix B) (NFA and the contract markets are referred to as SROs).

The calculation of the fee amounts to be charged for FY 2003 is based on an average of actual program costs incurred during FY 2000, 2001, and 2002, as explained below. The FY 2003 fee schedule is set forth in the **SUPPLEMENTARY INFORMATION.**

**EFFECTIVE DATES:** The FY 2003 fees for Commission oversight of each SRO rule enforcement program must be paid by each of the named SROs in the amount specified by no later than May 10, 2004.

**FOR FURTHER INFORMATION CONTACT:** Stacy Dean Yochum, Counsel to the Executive Director, Office of the Executive Director, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, (202) 418–5160, or Eileen Chotiner, Attorney, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, (202) 418–5467.

**SUPPLEMENTARY INFORMATION:**

### I. General

This notice relates to fees for the Commission's review of the rule enforcement programs at the registered futures associations and contract markets regulated by the Commission.

### II. Schedule of Fees

Fees for the Commission's review of the rule enforcement programs at the registered futures associations and contract markets regulated by the Commission:

| Entity | Fee amount |
|---|---|
| Chicago Board of Trade | $161,420 |
| Chicago Mercantile Exchange | 170,273 |
| Kansas City Board of Trade | 12,301 |
| New York Mercantile Exchange | 132,918 |
| Minneapolis Grain Exchange | 6,748 |
| National Futures Association | 195,708 |
| New York Board of Trade | 58,265 |
| Total | 737,633 |

### III. Background Information

*A. General*

The Commission recalculates the fees charged each year with the intention of recovering the costs of operating this Commission program.[1] All costs are accounted for by the Commission's Management Accounting Structure Codes (MASC) system, which records each employee's time for each pay period. The fees are set each year based on direct program costs, plus an overhead factor.

*B. Overhead Rate*

The fees charged by the Commission to the SROs are designed to recover program costs, including direct labor costs and overhead. The overhead rate is calculated by dividing total Commission-wide overhead direct program labor costs into the total amount of the Commission-wide overhead pool. For this purpose, direct program labor costs are the salary costs of personnel working in all Commission

[1] *See* Section 237 of the Futures Trading Act of 1982, 7 U.S.C. 16a and 31 U.S.C. 9701. For a broader discussion of the history of Commission Fees, *see* 52 FR 46070 (Dec. 4, 1987).

programs. Overhead costs consist generally of the following Commission-wide costs: indirect personnel costs (leave and benefits), rent, communications, contract services, utilities, equipment, and supplies. This formula has resulted in the following overhead rates for the most recent three years (rounded to the nearest whole percent): 105 percent for fiscal year 2000, 117 percent for fiscal year 2001, and 129 percent for fiscal year 2002. These overhead rates are applied to the direct labor costs to calculate the costs of oversight of SRO rule enforcement programs.

*C. Conduct of SRO Rule Enforcement Reviews*

Under the formula adopted in 1993 (58 FR 42643, Aug. 11, 1993), which appears at 17 CFR Part 1 Appendix B, the Commission calculates the fee to recover the costs of its review of rule enforcement programs, based on the three-year average of the actual cost of performing reviews at each SRO. The cost of operation of the Commission's program of SRO oversight varies from SRO to SRO, according to the size and complexity of each SRO's program. The three-year averaging is intended to smooth out year-to-year variations in cost. Timing of reviews may affect costs—a review may span two fiscal years and reviews are not conducted at each SRO each year. Adjustments at actual costs may be made to relieve the burden on an SRO with a disproportionately large share of program costs.

The Commission's formula provides for a reduction in the assessed fee if an SRO has a smaller percentage of United States industry contract volume than its percentage of overall Commission oversight program costs. This adjustment reduces the costs so that as a percentage of total Commission SRO oversight program costs, they are in line with the pro rata percentage for that SRO of United States industry-wide contract volume.

The calculation made is as follows: The fee required to be paid to the Commission by each contract market is equal to the lesser of actual costs based on the three-year historical average of costs for that contract market or one-half of average costs incurred by the Commission for each contract market for the most recent three years, plus a pro rata share (based on average trading volume for the most recent three years) of the aggregate of average annual costs of all contract markets for the most recent three years. The formula for calculating the second factor is: 0.5a + 0.5 vt = current fee. In this formula, "a" equals the average annual costs, "v" equals the percentage of total volume across exchanges over the last three years, and "t" equals the average annual costs for all exchanges. NFA, the only registered futures association regulated by the Commission, has no contracts traded; hence its fee is based simply on costs for the most recent three fiscal years.

This table summarizes the data used in the calculations and the resulting fee for each entity:

| | Three-year average actual costs | Three-year percentage of volume | Average year 2003 fee |
|---|---|---|---|
| Chicago Board of Trade | $161,420 | 34.7882 | $161,420 |
| Chicago Mercantile Exchange | 170,273 | 47.6397 | 170,273 |
| New York Mercantile Exchange | 173,114 | 14.4836 | 132,918 |
| New York Board of Trade | 100,453 | 2.5111 | 58,265 |
| Kansas City Board of Trade | 22,310 | 0.3581 | 12,301 |
| Minneapolis Grain Exchange | 12,617 | 0.1373 | 6,748 |
| Subtotal | 640,187 | 99.9181 | 541,925 |
| National Futures Association | 195,708 | N/A | 195,708 |
| Total | 835,895 | 99.9181 | 737,633 |

An example of how the fee is calculated for one exchange, the Minneapolis Grain Exchange, is set forth here:

a. Actual three-year average costs equal $12,617.

b. The alternative computation is:

(.5) ($12,617) + (.5) (.001373) ($640.187) = $6748.

c. The fee is the lesser of a or b; in this case $6748.

As noted above, the alternative calculation based on contracts traded is not applicable to the NFA because it is not a contract market and has no contracts traded. The Commission's average annual cost for conducting oversight review of the NFA rule enforcement program during fiscal years 2000 through 2002 was $195,708 (one-third of $587,124). The fee to be paid by the NFA for the current fiscal year is $195,708.

**Regulatory Flexibility Act**

The Regulatory Flexibility Act, 5 USC 601, *et seq.*, requires agencies to consider the impact of rules on small business. The fees implemented in this release affect contract markets (also referred to as exchanges) and registered futures associations. The Commission has previously determined that contract markets and registered futures associations are not "small entities" for purposes of the Regulatory Flexibility Act. Accordingly, the Chairman, on behalf of the Commission, certifies pursuant to 5 USC 605(b) that the fees implemented here will not have a significant economic impact on a substantial number of small entities.

Issued in Washington, DC, on March 2, 2004, by the Commission.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 04–5101 Filed 3–9–04; 8:45 am]

BILLING CODE 6351–01–M

## CONSUMER PRODUCT SAFETY COMMISSION

**[CPSC Docket No. 04–C0003]**

### The Lifetime Products, Inc., Provisional Acceptance of a Settlement Agreement and Order

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the

**Federal Register** in accordance with the terms of 16 CFR 11118.20(e). Published below is a provisionally-accepted Settlement Agreement with The Lifetime Products, containing a civil penalty of $800,000.

**DATES:** Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by March 25, 2004.

**ADDRESSES:** Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 04–C0003, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

**FOR FURTHER INFORMATION CONTACT:** Dennis C. Kacoyanis, Trial Attorney, Office of Compliance, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–7587.

**SUPPLEMENTARY INFORMATION:** The text of the Agreement and Order appears below.

Dated: March 5, 2004.

**Todd A. Stevenson,**

*Secretary.*

**CONSUMER PRODUCT SAFETY COMMISSION**

**[CPSC Docket No. 04–C0003]**

**In the Matter of Lifetime Products, Inc.; Settlement Agreement and Order**

1. This Settlement Agreement is made by and between the staff ("the staff") of the U.S. Consumer Product Safety Commission ("the Commission") and Lifetime Products, Inc. ("Lifetime" or "Respondent"), a corporation, in accordance with 16 CFR 1118.20 of the Commission's Procedures for Investigation, Inspections, and Inquiries under the Consumer Products Safety Act ("CPSA"). This Settlement Agreement and the incorporated attached Order settle the staff's allegations set forth below.

**I. The Parties**

2. The Commission is an independent federal regulatory agency responsible for the enforcement of the Consumer Product Safety Act, 15 U.S.C. 2051 *et seq.*

3. Lifetime is a corporation organized and existing under the laws of the State of Utah with its principal corporate offices located at Clearfield, UT.

**II. Allegations of the Staff**

4. Between 1994 and May 2000, Lifetime manufactured and distributed nationwide approximately 1.7 million portable basketball hoops ("basketball hoop(s)" or "product(s)").

5. The basketball hoops are sold to and/or are used by consumers for use in or around a permanent or temporary household or residence, a school, in recreation, or otherwise and are, therefore, "consumer products" as defined in section 3(a)(1) of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2052(a)(1). Respon dent is a "manufacturer" or "distributor" of the basketball hoops, which were "distributed in commerce" as those terms are defined in sections 3(a)(4), (5), (11), and (12) of the CPSA, 15 U.S.C. 2052(a)(4), (5), (11), and (12).

6. In the normal course of assembling the product, the consumer must use a 3¾" bolt to connect the product's pole braces to the pole. The instruction for attaching the bolt states, "Completely tighten all base and pole brace hardware at this time."

7. Because the consumer has no reference point for determining when the bolt is "tight enough," it is reasonable foreseeable that the consumer will tighten the 3¾" bolt until it is difficult to turn. When this occurs, the exposed threaded portion of the bolt can protrude from the pole.

8. The portable basketball hoop is defective because it is designed so that when the consumer tightens the 3¾" bolt until it is difficult to turn, the exposed threaded portion of the bolt can protrude from the pole. If this occurs, a person playing basketball can come into contact with the exposed threaded portion of the protruding bolt, and suffer serious injury including a possible fracture to the leg and/or serious lacerations.

9. Between March 1999 and March 2000, Lifetime learned of four basketball players who had received serious lacerations to their legs when they came in contact with the basketball hoop's protruding bolt. Also, one of these basketball players broke his leg.

10. On or about May 23, 2000, Lifetime made changes to its product consisting of the following: (a) A cap nut to cover the bolt; (b) replacement of the 3¾ bolt; and (c) revision of the assembly instructions warning consumers of serious injuries if they over-tightened the bolt.

11. From April 2000 to July 2001, Lifetime learned of 19 additional reports of basketball players sustaining lacerations to their legs when they came in contact with the basketball hoop's protruding bolt. Some of these lacerations were quite severe and required numerous sutures to close the wounds.

12. By the time the staff opened its investigation of Lifetime in July 2001, Lifetime had obtained information about 23 reports of injuries that occurred when basketball players came in contact with the product's protruding bolt.

13. As set forth in more detail in paragraphs 4 through 10 above, Lifetime obtained information which reasonably supported the conclusion that the basketball hoop described in paragraph 4 above contained a defect which—given the pattern of the defect, the severity of the risk of injury, and the number of products—could create a substantial product hazard. Lifetime failed to report such information to the Commission as required by section 15(b)(2) of the CPSA, 15 U.S.C. 2064(b)(2).

14. As set forth in more detail in paragraphs 4 through 10 above, Lifetime obtained information which reasonably supported the conclusion that the basketball hoop described in paragraph 4 above created an unreasonable risk of serious injury. Lifetime failed to report such information to the Commission as required by section 15(b)(3) of the CPSA, 15 U.S.C. 2064(b)(3).

15. By failing to provide the information to the Commission as required by sections 15(b)(2) and (3) of the CPSA, 15 U.S.C. 2064(b)(2) and (3), Lifetime violated section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4).

16. Lifetime committed this failure to report to the Commission "knowingly" as the term "knowingly" is defined in section 20(d) of the CPSA, 15 U.S.C. 2069(d), thus, subjecting Lifetime to civil penalties under section 20 of the CPSA, 15 U.S.C. 2069.

**III. Lifetime's Response**

17. Lifetime denies the staff's allegations that it violated the CPSA as set forth in paragraphs 4 through 16 above.

18. Lifetime denies that the portable basketball hoop contains a defect which could create a substantial product hazard, or creates an unreasonable reasonable risk of serious injury and further denies that it violated the reporting requirements of section 15(b) of the CPSA, 15 U.S.C. 2064(b).

19. Based on an examination of basketball hoops involved in consumer injuries and on testing of basketball hoops by Lifetime, Lifetime concluded that the bolt protruded from the pole because consumers had over-tightened the bolt contrary to the assembly instructions. Lifetime believes and has advised the staff that the basketball hoop if properly assembled meets the relevant ASTM Voluntary Standard.

20. Lifetime enters this Settlement Agreement and Order for settlement purposes only, to avoid incurring additional legal costs and expenses. In settling this matter, Lifetime does not admit any fault, liability, statutory, or regulatory violation.

**IV. Agreement of the Parties**

21. The Consumer Product Safety Commission has jurisdiction over this matter and over Lifetime under the Consumer Product Safety Act, 15 U.S.C. 2051 *et seq.*

22. This Agreement is entered into for settlement purposes only and does not constitute an admission by Lifetime or a determination by the Commission that Lifetime knowingly violated the CPSA's reporting requirement.

23. In settlement of the staff's allegations, Lifetime agrees to pay a civil penalty in the amount of eight hundred thousand dollars ($800,000.00) as set forth in the incorporated Order.

24. Upon final acceptance of this Agreement by the Commission and issuance of the Final Order, Respondent knowingly, voluntarily, and completely waives any rights it may have in this matter (1) to an administrative or judicial hearing, (2) to judicial review or other challenge or contest of the validity of the Commmission's actions, (3) to a determination by the Commission as to whether respondent failed to comply with the CPSA and the underlying regulations, (4) to a statement of findings of fact and conclusions of law, and (5) to any claims under the Equal Access to Justice Act.

25. Upon provisional acceptance of this Agreement by the Commission, this Agreement shall be placed on the public

record and shall be published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e). If the Commission does not receive any written objections within 15 days, the Agreement will be deemed finally accepted on the 16th day after the date it is published in the **Federal Register**.

26. The Commission may publicize the terms of this Settlement Agreement and Order.

27. The Commission's Order in this matter is issued under the provisions of the CPSA, 15 U.S.C. 2051 *et seq.* A violation of this Order may subject Lifetime to appropriate legal action.

28. This Settlement Agreement may be used in interpreting the Order. Agreements, understandings, representations, or interpretations apart from those contained in this Settlement Agreement and Order may not be used to vary or contradict its terms.

29. The provisions of this Settlement Agreement and Order shall apply to Lifetime and each of its successors and assigns.

Respondent, Lifetime Products, Inc.

Dated: February 13, 2004.

Barry Mower,

*President, Lifetime Products, Inc., PO Box 160010, Freeport Center, Building D–11, Clearfield, UT 84016–0010.*

Dated: February 13, 2004.

Kelly H. Macfarlane, Esquire,

*Christensen & Jensen, Attorneys for Respondent, Lifetime Products, Inc., 50 South Main Street, Suite 1500, Salt Lake City, UT 84144.*

Commission Staff

Alan H. Schoem,

*Assistant Executive Director, Office of Compliance, Consumer Product Safety Commission, Washington, DC 20207–0001.*

Eric L. Stone,

*Legal Division, Office of Compliance.*

Dated: February 18, 2004.

Dennis C. Kacoyanis,

*Trial Attorney, Legal Division, Office of Compliance.*

**CONSUMER PRODUCT SAFETY COMMISSION**

**[CPSC Docket No. 04–C0003]**

**In the Matter of Lifetime Products, Inc.; Order**

Upon consideration of the Settlement Agreement entered into between Respondent Lifetime Products, Inc., and the staff of the Consumer Product Safety Commission; and the Commission having jurisdiction over the subject matter and Lifetime Products, Inc.; and it appearing that the Settlement Agreement and Order is in the public interest, it is

*Ordered* that the Settlement Agreement be, and hereby is, accepted; and it is

*Further ordered* that upon final acceptance of the Settlement Agreement and Order, Lifetime Products, Inc. shall pay to the Commission a civil penalty in the amount of eight hundred thousand dollars ($800,000.00) in two installment payments of four hundred thousand dollars ($400,000.00) each. The first payment of four hundred thousand dollars ($400,000.00) is due on or before June 1, 2004 or within twenty (20) days after service upon Respondent of this Final Order of the Commission, whichever is later. The second payment of four hundred thousand dollars ($400,000.00) is due on or before December 31, 2004. Upon the failure of Respondent Lifetime Products, Inc. to make a payment or upon the making of a late payment by Respondent Lifetime Products, Inc. (a) the entire amount of the civil penalty shall be due and payable, and (b) interest on the outstanding balance shall accrue and be paid at the Federal legal rate of interest under the provisions of 28 U.S.C. 1961(a) and (b).

Provisionally accepted and Provisional Order issued on the 4th date of March, 2004.

By Order of the Commission.

Todd A. Stevenson,

*Secretary, Consumer Product Safety Commission.*

[FR Doc. 04–5403 Filed 3–9–04; 8:45 am]

**BILLING CODE 6355–01–M**

## DEPARTMENT OF DEFENSE

### Defense Logistics Agency

### Privacy Act of 1974; Computer Matching Program

**AGENCY:** Defense Manpower Data Center, Defense Logistics Agency, DoD.

**ACTION:** Notice of a computer matching agreement.

**SUMMARY:** Subsection (e)(12) of the Privacy Act of 1974, as amended (5 U.S.C. 55a), requires agencies to publish advanced notice of any proposed or revised computer matching program by the matching agency for public comment. The DoD, as the matching agency under the Privacy Act is hereby giving notice to the record subjects of a computer matching program between VA and DoD that their records are being matched by computer. The purpose is to verify eligibility for the DoD/USCG members of the Reserve forces who receive VA disability compensation or pension to also receive military pay and allowances when performing reserve duty.

**DATES:** This proposed action will become effective March 10, 2004, and the computer matching will proceed accordingly without further notice, unless comments are received which would result in a contrary determination or if the Office of Management and Budget or Congress objects thereto. Any public comment must be received before the effective date.

**ADDRESSES:** Any interested party may submit written comments to the Director, Defense Privacy Office, 1941 Jefferson Davis Highway, Suite 920, Arlington, VA 22202–4502.

**FOR FURTHER INFORMATION CONTACT:** Mr. Vahan Moushegian, Jr. at (703) 607–2943.

**SUPPLEMENTARY INFORMATION:** Pursuant to subsection (o) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), the DMDC and VA have concluded an agreement to conduct a computer matching program between tbe agencies. The purpose of the match is to verify eligibility for the DoD/USCG members of the Reserve forces who receive VA disability compensation or pension to also receive military pay and allowances when performing reserve duty.

The parties to this agreement have determined that a computer matching program is the most efficient, expeditious, and effective means of obtaining and processing the information needed by the VA to identify those individuals who are receiving both VA compensation and DoD/USCF payments for those periods when they are performing Reserve duty. By law, the individual must waive his or her entitlement to VA disability compensation or pension if he or she desires to receive DoD/USCG pay and allowances for the period of duty performed. This matching agreement will result in an accurate reconciliation of such payments by permitting the VA to determine which individuals are being paid by DoD/USCG for duty performed and are being paid VA disability compensation or pension benefit for the same period of time without a waiver on file with the VA. If this reconciliation is not done by computer matching, but is done manually, the cost would be prohibitive and most dual payments would not be detected.

A copy of the computer matching agreement between VA and DoD is available upon request. Requests should be submitted to the address caption above or to the Department of Veterans Affairs, Veterans Benefit Administration, 810 Vermont Avenue, NW., Washington, DC 20420.

Set forth below is the notice of the establishment of a computer matching program required by paragraph 6.c. of the Office of Management and Budget Guidelines on computer matching published on June 19, 1989, at 54 FR 25818.

The matching agreement, as required by 5 U.S.C. 552a(r) of the Privacy Act, and an advance copy of this notice was submitted on February 24, 2004, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the

Administrator of the Office of Management and Budget pursuant to paragraph 4d 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: March 1, 2004.

**L.M. Bynum,**

*Alternate OSC Federal Register Liaison Officer, Department of Defense.*

**Notice of a Computer Matching Program Between the Department of Veterans Affairs and the Department of Defense for Reserve Pay Reconciliation**

A. *Participating Agencies:* Participants in this computer matching program are the Department of Veterans Affairs (VA) and the Defense Manpower Data Center (DMDC) of the Department of Defense (DoD). The VA is the source agency, *i.e.*, the activity disclosing the records for the purpose of the match. The DMDC is the specific recipient activity or matching agency, *i.e.*, the agency that actually performs the computer matching.

B. *Purpose of the Match:* The purpose of this agreement is to verify eligibility for DoD/USCG members of the Reserve forces who receive VA disability compensation or pension to also receive military pay and allowances when performing reserve duty.

C. *Authority for Conducting the Match:* The legal authority for conducting the matching program is 38 U.S.C. 5304(c) which provides that VA disability compensation or pension based upon his or her previous military service shall not be paid to a person for any period for which such person receives active service pay. 10 U.S.C. 12316 further provides that a reservist who is entitled to disability payments due to his or her earlier military service and who performs duty for which he or she is entitled to DoD/USCG compensation may elect to receive for that duty either the disability payments or, if he or she waives such payments, the DoD/USCG compensation for the duty performed.

D. *Records to be Matched:* The systems of records maintained by the respective agencies under the Privacy Act of 1974, as amended, 5 U.S.C. 552a, from which records will be disclosed for the purpose of this computer match are as follows:

1. The DMDC will use the system of records identified as S322.10 DMDC, entitled "Defense Manpower Data Center Data Base," last published December 26, 2002, at 67 FR 78781.

2. The VA will use the system of records identified as "VA Compensation, Pension and Education and Rehabilitation Records—VA (58 VA 21/22)," first published at 41 **Federal Register** 9294 (Mar. 3, 1976), and last amended at 66 FR 47727 (September 13, 2001), with other amendments as cited therein.

E. *Description of Computer Matching Program:* Annually, VA will submit to DMDC a electronic file of all VA pension and disability compensation beneficiaries as of the end of September. Upon receipt of the electronic file, DMDC will match this file by SSN with a file of days drilled as submitted to DMDC by the military services and the USCG. Upon a SSN match, or a "hit," of both files, DMDC will provide VA the individual's name and other identifying data, to include the number of days drilled, by Fiscal Year, for each matched record.

The hits will be furnished to VA which will be responsible for verifying and determining that the data in the DMDC electronic file is consistent with the VA files and for resolving any discrepancies or inconsistencies on an individual basis. VA will initiate actions to obtain an election by the individual of which pay he or she wishes to receive and will be responsible for making final determinations as to positive identification, eligibility for, or amounts of pension or disability compensation benefits, adjustments thereto, or any recovery of overpayments, or such other action as authorized by law.

The annual electronic file provided by the VA will contain information on approximately 2.5 million pension and disability compensation recipients.

The DMDC computer database file contains information on approximately 832,000 DoD and 8,000 USCG reservists who received pay and allowances for performing authorized duty. VA will furnish DMDC the name and SSN of all VA pension and disability compensation recipients and DMDC will supply VA the name, SSN, date of birth, and the number of days drilled by fiscal year of each reservist who is identified as a result of the match.

F. *Inclusive Dates of the Matching Program:* This computer matching program is subject to public comment and review by Congress and the Office of Management and Budget. If the mandatory 30 day period for comment has expired and no comments are received and if no objections are raised by either Congress or the Office of Management and Budget within 40 days of being notified of the proposed match, the computer matching program becomes effective and the respective agencies may begin the exchange at a mutually agreeable time on an annual basis. By agreement between VA and DMDC, the matching program will be in effect for 18 months with an option to renew for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

G. *Address for Receipt of Public Comments or Inquires:* Director, Defense Privacy Office, 1941 Jefferson Davis Highway, Suite 920, Arlington, VA 22202–4502. Telephone (703) 607–2943.

[FR Doc. 04–4892 Filed 3–9–04; 8:45 am]

BILLING CODE 5001–06–M

## DEPARTMENT OF DEFENSE

### Defense Logistics Agency

### Privacy Act of 1974; Computer Matching Program

**AGENCY:** Defense Manpower Data Center, Defense Logistics Agency, DOD.

**ACTION:** Notice of a computer matching agreement.

**SUMMARY:** Subsection (e)(12) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a) requires agencies to publish advance notice of any proposed or revised computer matching program by the matching agency for public comment. The Department of Defense (DoD), as the matching agency under the Privacy Act, is hereby giving notice to the record subjects of a computer matching program between the Office of Personnel Management (OPM) and the DoD that records are being matched by computer. The goal of the match is to identify individuals who are improperly receiving credit for military service in their civil service annuities or annuities based on the "guaranteed minimum" disability formula. This match will identify and/or prevent erroneous payments under the Civil Service Retirement Act (CSRA) and the Federal Employees Retirement System Act (FERSA) pay systems.

**DATES:** This proposed action will become effective March 10, 2004 and the computer matching will proceed accordingly without further notice, unless comments are received which would result in a contrary determination or if the Office of Management and Budget or Congress objects thereto. Any public comment must be received before the effective date.

**ADDRESSES:** Any interested party may submit written comments to the Director, Defense Privacy Office, 1941 Jefferson Davis Highway, Suite 920, Arlington, VA 22202–4502.

**FOR FURTHER INFORMATION CONTACT:** Mr. Vahan Moushegian, Jr. at (703) 607–2943.

**SUPPLEMENTARY INFORMATION:** Pursuant to subsection (o) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), the DoD and OPM have concluded an agreement to conduct a computer matching program between the agencies. The purpose of the match is to exchange personal data between the agencies for identification of individuals who are improperly receiving military retired pay.

A copy of the computer matching agreement between the OPM and the DoD is available upon request. Requests should be submitted to the address caption above or to the chief, Retirement Inspection Branch, Room 2309, Retirement and Insurance Service, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

Set forth below is the notice of the establishment of a computer matching program required by paragraph 6.c. of the Office of Management and Budget Guidelines on computer matching published on June 19, 1989, at 54 FR 25818.

The matching agreement, as required by 5 U.S.C. 552a(r) of the Privacy Act, and an advance copy of this notice was submitted on February 24, 2004, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget pursuant to paragraph 4d 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: March 1, 2004.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer; Department of Defense.*

**Notice of a Computer Matching Program Between the Office of Personnel Management, and the Department of Defense for Retired Military Pay**

A. *Participating Agencies:* Participants in this computer matching program are the Office of Personnel Management (OPM) and the Defense Manpower Data Center (DMDC) of the Department of Defense (DoD). The Office of Personnel Management is the source agency, *i.e.*, the activity disclosing the records for the purpose of the match. The DMDC is the specific recipient activity or matching agency, *i.e.*, the agency that actually performs the computer matching.

B. *Purpose of the Match:* The purpose of this agreement is to establish the conditions for a computer matching program between the OPM as the source agency and the DMDC as the recipient agency. The goal of the match is to identify individuals who are improperly receiving credit for military service in their civil service annuities or annuities based on the "guaranteed minimum" disability formula. This match will identify and/or prevent erroneous payments under the CSRA and FERSA Pay system.

C. *Authority for conducting the Match:* It is OPM's responsibility to monitor retirement and survivor benefits paid under 5 U.S.C. 8331 (CSRA), *et seq.* and 5 U.S.C. 8401 (FERSA), *et seq.* Specifically, 5 U.S.C. 8332 is the legal authority for CSRA and 5 U.S.C. 8411 is the legal authority for FERSA for determining whether military service may be credited for civil service retirement purposes.

D. *Records To Be Matched:* The systems of records described below contain an appropriate routine use provisions which permits disclosure of information between agencies.

The OPM will use the system of records identified as OPM/Central-1, "Civil Service Retirement and Insurance Records," last published at 64 FR 54930, (October 8, 1999), as amended at 65 FR 25775, May 3, 2000.

The DoD will use the system of records identified as S322.10 DMDC, Defense Manpower Data Center Data Base, published at 67 FR 78781, December 26, 2002.

E. *Description of Computer Matching Program:* The OPM will provide the DMDC with an electronic file which contains specified data elements of individual CSRA and FERSA annuitants. Upon receipt of the electronic file, the DMDC will perform a computer match using all nine digits of the SSN's in the OPM file against the DMDC computer database on military retired pay data. The data will be matched to identify those individuals who are being paid in apparent violation of law, *i.e.*, the civil service annuity is based on military service other than that which was awarded (1) on account of a service connected disability incurred in combat with an enemy of the United States; (2) on account of a service connected disability caused by an instrumentality of war and incurred in the line of duty during a period war; or (3) based on non-regular (*i.e.*, reserve) service under the provisions of 10 U.S.C. 12731–12739.

The data elements provided by the OPM for the match file will contain the names, addresses, social security number, date of birth, OPM retirement claim number, OPM provision retired codes, and annuity payment and service data of individuals currently receiving benefits from OPM. The OPM database contains approximately 1.7 million records of CSRA and FERSA retirees.

The data elements provided by DMDC to OPM are name, address, social security number, branch of service, date of birth, and date of retirement. The DMDC database contains approximately 2.0 million records of retired military personnel.

F. *Inclusive Dates of the Matching Program:* This computer matching program is subject to public comment and review by Congress and the Office of Management and Budget. If the mandatory 30 day period for comment has expired and no comments are received and if no objections are raised by either Congress or the Office of Management and Budget within 40 days of being notified of the proposed match, the computer matching program becomes effective and the respective agencies may begin the exchange at a mutually agreeable time on a semi-annual basis. By agreement between VA and DMDC, the matching program will be in effect for 18 months with an option to renew for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

G. *Address for Receipt of Public Comments or Inquiries:* Director, Defense Privacy Office, 1941 Jefferson Davis Highway, Suite 920, Arlington, VA 22202–4502. Telephone (703) 607–2943.

[FR Doc. 04–4893 Filed 3–9–04; 8:45 am]
BILLING CODE 5001–06–M

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Notice of Availability of Government-Owned Invention; Available for Licensing

**AGENCY:** Department of the Navy, DoD.

**ACTION:** Notice.

**SUMMARY:** The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy. U.S. Patent Application Serial No. 10/693,846 entitled "Semiconductor Substrate Incorporating a Neutron

Conversion Layer", Navy Case No. 84,785.

**ADDRESSES:** Requests for information about the invention cited should be directed to the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, and must include the Navy Case number.

**FOR FURTHER INFORMATION CONTACT:** Jane Kuhl, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone (202) 767–3083. Due to temporary U.S. Postal Service delays, please fax (202) 404–7920, E-Mail: *kuhl@nrl.navy.mil* or use courier delivery to expedite response.

(Authority: 35 U.S.C. 207, 37 CFR Part 404.)

Dated: March 3, 2004.

**S.A. Hughes,**

*Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 04–5325 Filed 3–9–04; 8:45 am]

**BILLING CODE 3810–FF–P**

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Notice of Availability of Government-Owned Inventions; Available for Licensing

**AGENCY:** Department of the Navy, DoD.

**ACTION:** Notice.

**SUMMARY:** The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are available for domestic and foreign licensing by the Department of the Navy.

The following patents are available for licensing:

U.S. Patent No. 6,539,872: Fuze Sterilization Using Sacrificial Anodic Component.//U.S. Patent No. 6,552,336: Non-Invasive, Opto-Acoustic Water Current Measurement System and Method.//U.S. Patent No. 6,561,023: Cellulose-Based Water Sensing Actuator.//U.S. Patent No. 6,561,115: Anchor Insertion Device.//U.S. Patent No. 6,568,878: Wave Energy Dissipater and Beach Renourishing System.//U.S. Patent No. 6,569,254: Localized Acidic Underwater Surface Cleaning Apparatus.//U.S. Patent No. 6,571,906: Underwater Sound Mitigation System for Explosive Testing.//U.S. Patent No. 6,586,748: Non-Invasive Water Current Measurement System and Method.//U.S. Patent No. 6,609,473: High Speed Modular Sea Base.//U.S. Patent No. 6,618,687: Temperature-Based Estimation of Remaining Absorptive Capacity of a Gas Absorber.//U.S. Patent No. 6,619,220: Hybrid ES/Hovercraft with Retractable Skirt System.//U.S. Patent No. 6,620,009: Method of Making Selective Multiple Contour High Efficiency Swim Fins.//U.S. Patent No. 6,622,063: Container-Based Product Dispensing System.//U.S. Patent No. 6,622,098: Automated System for Calculating Magnetic Stray Field Data Associated with Current Loop Configuration.//U.S. Patent No. 6,640,739: Air-Delivered Monocoque Submersible Vehicle System.//U.S. Patent No. 6,655,313: Collapsible Wet or Dry Submersible Vehicle.//U.S. Patent No. 6,655,636: Product Wrapping Incorporating Air Drag Device.//U.S. Patent No. 6,657,585: System for Generating GPS Position of Underwater Vehicle.//

**ADDRESSES:** Requests for copies of the patents cited should be directed to Naval Surface Warfare Center Panama City, 110 Vernon Ave, Code XP01L, Panama City, FL 32407–7001.

**FOR FURTHER INFORMATION CONTACT:** Mr. Harvey A. Gilbert, Counsel, Naval Surface Warfare Center Panama City, 110 Vernon Ave, Code XP01L, Panama City, FL 32407–7001, telephone (850) 234–4646.

**Authority:** 35 U.S.C. 207, 37 CFR Part 404.

Dated: March 3, 2004.

**S.A. Hughes,**

*Lieutenant Commander, Judge Advocate General Corps, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 04–5326 Filed 3–9–04; 8:45 am]

**BILLING CODE 3810–FF–P**

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Notice of Availability of Government-Owned Inventions; Available for Licensing

**AGENCY:** Department of the Navy, DoD.

**ACTION:** Notice.

**SUMMARY:** The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are available for licensing by the Department of the Navy. U.S. Patent No. 5,492,696, "Controlled Release Microstructures," Navy Case No. 76,896 and U.S. Patent Application Serial No. 10/693,847, "Neutron Sensitive Integrated Circuit," Navy Case No. 84,355.

**ADDRESSES:** Requests for copies of the inventions cited should be directed to the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, and must include the Navy Case number.

**FOR FURTHER INFORMATION CONTACT:** Jane F. Kuhl, Technology Transfer Office, NRL Code 1004,4555 Overlook Ave, SW., Washington, DC 20375–5320, telephone (202) 767–7230. Due to temporary U.S. Postal Service delays, please fax to (202) 404–7920, E-Mail: *kuhl@utopia.nrl.navy.mil* or use courier delivery to expedite response.

(Authority: 35 U.S.C. 207, 37 CFR Part 404.)

Dated: March 3, 2004.

**S.A. Hughes,**

*Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 04–5327 Filed 3–9–04; 8:45 am]

**BILLING CODE 3810–FF–P**

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Notice of Availability of Government-Owned Invention; Available for Licensing

**AGENCY:** Department of the Navy, DoD.

**ACTION:** Notice.

**SUMMARY:** The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy. U.S. Patent No. 6,568,052 entitled "Method for Constructing a Fluidic Driver for Use With Microfluidic Circuits as a Pump and Mixer", Navy Case No. 82,533.

**ADDRESSES:** Requests for information about the invention cited should be directed to the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, and must include the Navy Case number.

**FOR FURTHER INFORMATION CONTACT:** Jane Kuhl, Technology Transfer Office, NRL Code 1004, 4555 Overlook Ave, SW., Washington, DC 20375–5320, telephone (202) 767–3083. Due to temporary U.S. Postal Service delays, please fax (202) 404–7920, E-Mail: *kuhl@nrl.navy.mil* or use courier delivery to expedite response.

(Authority: 35 U.S.C. 207, 37 CFR Part 404.)

Dated: March 3, 2004.

**S.A. Hughes,**

*Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 04–5328 Filed 3–9–04; 8:45 am]

**BILLING CODE 3810–FF–P**

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Notice of Availability of Government-Owned Invention; Available for Licensing

**AGENCY:** Department of the Navy, DoD.

**ACTION:** Notice.

**SUMMARY:** The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy. Navy Case No. 84,722 entitled "Formulation for Dust Abatement and Prevention of Erosion."

**ADDRESSES:** Requests for information about the invention cited should be directed to the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, and must include the Navy Case number.

**FOR FURTHER INFORMATION CONTACT:** Jane Kuhl, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone (202) 767–3083. Due to temporary U.S. Postal Service delays, please fax (202) 404–7920, E-Mail: *kuhl@nrl.navy.mil* or use courier delivery to expedite response.

(Authority: 35 U.S.C. 207, 37 CFR Part 404.)

Dated: March 3, 2004.

**S. A. Hughes,**

*Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 04–5329 Filed 3–9–04; 8:45 am]

BILLING CODE 3810–FF–P

## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before April 9, 2004.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Melanie Kadlic, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Melanie_Kadlic@omb.eop.gov.*

**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: March 3, 2004.

**Angela C. Arrington,**

*Leader, Regulatory Information Management Group, Office of the Chief Information Officer.*

**Office of Safe and Drug Free Schools**

*Type of Review:* Revision.
*Title:* Safe Schools/Healthy Students.
*Frequency:* Semi-Annually.
*Affected Public:* State, local, or tribal gov't, SEAs or LEAs (primary).
*Reporting and Recordkeeping Hour Burden:*
Responses: 500.
Burden Hours: 13,000.

*Abstract:* Information will be used to assess applicant's proposal in order to make grant awards. For those applicants awarded grants, information will be used to determine effectiveness of project implementation and compliance with GPRA.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

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 2451. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian.reese@ed.gov.* Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 04–5218 Filed 3–9–04; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before April 9, 2004.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Melanie Kadlic, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Melanie_Kadlic@omb.eop.gov.*

**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: March 5, 2004.

**Angela C. Arrington,**

*Leader, Regulatory Information Management Group, Office of the Chief Information Officer.*

**Office of Elementary and Secondary Education**

*Type of Review:* Extension.

*Title:* ESEA Title I, Part C (Education of Migratory Children) Migrant Child Count Report.

*Frequency:* Annually.

*Affected Public:* State, local, or tribal gov't, SEAs or LEAs.

*Reporting and Recordkeeping Hour Burden:* Responses: 52.

*Burden Hours:* 1,560.

*Abstract:* The report collects information on the numbers of identified eligible migratory children in the States, for use in allocating State Migrant Education Program formula grant funds and for reporting on the size of the migrant child population to Congress and the public.

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 2438. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov*. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 04–5363 Filed 3–9–04; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF EDUCATION

### Office of Special Education and Rehabilitative Services; Overview Information; Technical Assistance and Dissemination To Improve Services and Results for Children With Disabilities—Regional Resource Centers; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2004

*Catalog of Federal Domestic Assistance (CFDA) Number:* 84.326R.

**DATES:** *Applications Available:* March 11, 2004.

*Deadline for Transmittal of Applications:* April 26, 2004.

*Deadline for Intergovernmental Review:* June 25, 2004.

*Eligible Applicants:* State educational agencies (SEAs), local educational agencies (LEAs), institutions of higher education (IHEs), other public agencies, nonprofit private organizations, for-profit organizations, outlying areas, freely associated States, and Indian tribes or tribal organizations.

*Estimated Available Funds:* $7,800,000.

*Maximum Award:* We will reject any application that proposes a budget exceeding $1,300,000 for a single budget period of 12 months. The Assistant Secretary for the Office of Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

*Estimated Number of Awards:* 6.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 60 months.

**Full Text of Announcement**

**I. Funding Opportunity Description**

*Purpose of Program:* This program provides technical assistance and information that (1) support States and local entities in building capacity to improve early intervention, educational, and transitional services and results for children with disabilities and their families; and (2) address goals and priorities for changing State systems that provide early intervention, educational, and transitional services for children with disabilities and their families.

*Priority:* In accordance with 34 CFR 75.105(b)(2)(iv), this priority is from allowable activities specified in the statute (*see* sections 661(e)(2) and 685 of the Individuals with Disabilities Education Act (IDEA)).

*Absolute Priority:* For FY 2004 this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

*Background:* Since 1969, the Office of Special Education Programs (OSEP) has supported Regional Resource Centers (RRCs) to provide technical assistance and support to SEAs and more recently to Part C Lead Agencies (LA). Although SEAs and LAs are the RRC's primary customers, RRCs may provide technical assistance to local agencies and LEAs at the request of the SEA or LA. Activities have included staff training, policy analysis, product development, information dissemination, needs assessments, improvement planning, and supporting and facilitating State systems change efforts.

Over the years, the relationship between the RRCs and the States has evolved from RRCs passively responding to State-identified needs, in isolation from OSEP initiatives, to a relationship characterized by the proactive identification of issues and trends in need of technical support and conducted within the context of OSEP and other Department of Education initiatives (*e.g.*, Continuous Improvement Monitoring Process (CIMP), No Child Left Behind Act of 2001 (NCLB)) and policy. This revised relationship has been the product of the development of a more collaborative association with OSEP.

Through their relationship with SEAs and LAs, the RRCs have become a critical component for dissemination of, and support to, OSEP's expanded accountability strategy. This support has transcended the RCCs' traditional capacity as technical assistance providers to a role of brokering technical assistance between SEAs and LAs and OSEP-supported technical assistance and research centers.

*Priority:* The RRC's activities must include, but are not limited to, the following:

(a) Supporting efforts of sustainable systemic change through working with SEAs and LAs on better outcomes for infants, toddlers, and children with disabilities and their families by providing technical assistance to:

(1) Support and enhance States' performance measurement, data analysis, improvement planning, and system evaluation skills.

(2) Help SEAs, LAs, and their partners develop performance measurement systems to guide improvement efforts, especially related to annual performance reports. Technical assistance may include helping States to—

(A) Develop critical performance indicators for children with disabilities and the programs that serve them;

(B) Develop their annual performance reports;

(C) Assess State performance;

(D) Portray their current performance status relative to State-developed performance measures;

(E) Develop and implement strategies to improve performance and compliance; and

(F) Evaluate the impact of improvement activities.

(4) Support and enhance States' participation in OSEP's Continuous Improvement and Focused Monitoring System (CIFMS).

(5) Support and enhance States' ability to develop and submit eligibility documents.

(b) Disseminating scientifically-based practices to SEAs and LAs by—

(1) Using information from a variety of sources including, Department of Education and other government and nongovernment agency-funded technical assistance and research centers;

(2) Linking SEAs and LAs to Department of Education and other government and nongovernment agency-funded technical assistance and research centers;

(3) Employing effective technology and multiple strategies of communication for receiving and disseminating current information, including information on research-based practices;

(4) Supporting the Federal Resource Center's (FRC) consolidated RRC network Web site; and

(5) Supporting the FRC's consolidated RRC network information services initiative, including budgeting no more than 1.0 FTE positions to support the effort.

(c) Providing current information and technical assistance to SEAs on NCLB as it relates to IDEA and students with disabilities on—

(1) Highly qualified personnel requirements;

(2) Assessment requirements, including alternate assessment and alternate assessments based on alternate achievement standards;

(3) Professional development requirements; and

(4) Reading First and other NCLB programs.

(d) Collaborating with the Regional Parent Technical Assistance Centers (RPTAC) to (1) use available resources, access research-based practices and findings, and participate in educational reform activities; and (2) improve collaboration and coordination between RRCs, RPTACs, Parent Training and Information Centers, and Community Parent Training Centers by helping them to prepare training materials that include scientifically-based research on best practices and information on NCLB, and through such activities as—

(A) Participation in conference calls;

(B) Inviting RPTAC participation in RRC multiregional workgroups (*e.g.*, assessment, transition);

(C) As appropriate, attending RPTAC's national meetings; and

(D) Participating on a joint listserv and/or a Community of Practice Web site.

(e) Providing leadership and technical support to OSEP-coordinated, large-scale technical assistance initiatives, especially the Communities of Practice formed to address OSEP's CIFMS critical indicators (*i.e.*, school completion, access to the general curriculum, settings, early childhood environments, and identification).

(f) Providing OSEP-specified technical assistance to States. This effort may include participation in: (1) Collaborative Web-based technical assistance activities, (2) coordination of and participation in State-to-State communities of practice, and (3) direct technical assistance to OSEP-specified States through partnerships between OSEP and selected States. Staff time and project resources dedicated to provide technical assistance to OSEP-specified States will be negotiated with OSEP as part of the cooperative agreement within 30 days of the project award (OSEP anticipates that technical assistance to OSEP-specified States could averaged approximately $40,000 per year. Budgets should be developed with this in mind).

(g) Providing technical assistance to State Improvement grantees.

(h) Using personnel to provide technical assistance who have special education expertise in (1) reading for nonresponders, (2) core academic subjects, (3) early childhood education, (4) transition, (5) positive behavior supports, (6) alternate assessment, (7) recruitment and retention, (8) systems change (*e.g.*, Communities of Practice), (9) program evaluation, (10) parent and family involvement, and (11) NCLB (*e.g.*, improving achievement of children with disabilities).

(i) Prior to developing any new product, whether paper or electronic, submitting for approval a proposal describing the content and purpose of the product to the document review board of OSEP's Dissemination Center. These products may include analyses and syntheses of policy but not policy development.

In deciding whether to continue this project for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a), and in addition—

(1) The recommendation of a review team consisting of experts selected by the Secretary. The review will be conducted in Washington, DC during the last half of the project's second year. Projects must budget for the travel associated with this one-day intensive review;

(2) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the RRC; and

(3) Evidence of the degree to which the RRC's activities have contributed to changed practices and improved child outcomes.

*Geographic Regions*

The Secretary establishes the following geographic regions for the RRCs—

*Region 1:* Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, Vermont;

*Region 2:* Delaware, the District of Columbia, Kentucky, Maryland, North Carolina, South Carolina, Tennessee, Virginia, West Virginia;

*Region 3:* Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, Oklahoma, Texas, Puerto Rico, and the Virgin Islands;

*Region 4:* Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, Pennsylvania, Wisconsin;

*Region 5:* Arizona, Colorado, Kansas, Montana, New Mexico, Nebraska, North Dakota, South Dakota, Utah, Wyoming, the Bureau of Indian Affairs;

*Region 6:* Alaska, California, Hawaii, Idaho, Nevada, Oregon, Washington, American Samoa, Guam, the Commonwealth of the Northern Marianas, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.

*Waiver of Proposed Rulemaking:* Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities. However, section 661(e)(2) of IDEA makes the public comment requirements inapplicable to the priorities in this notice.

*Program Authority:* 20 U.S.C. 1485.

*Applicable Regulations:* The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

**Note:** The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

**Note:** The regulations in 34 CFR part 86 apply to institutions of higher education only.

**II. Award Information**

*Type of Award:* Cooperative agreements.

*Estimated Available Funds:* $7,800,000.

*Maximum Award:* We will reject any application that proposes a budget exceeding $1,300,000 for a single budget period of 12 months. The Assistant Secretary for the Office of Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register.**

*Estimated Number of Awards:* 6.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 60 months.

**III. Eligibility Information**

1. *Eligible Applicants:* SEAs, LEAs, IHEs, other public agencies, nonprofit private organizations, for-profit organizations, outlying areas, freely associated States, and Indian tribes or tribal organizations.

2. *Cost Sharing or Matching:* This competition does not involve cost sharing or matching.

3. *Other: General Requirements*—(a) The projects funded under this notice must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Applicants and grant recipients funded under this notice must involve individuals with disabilities or parents of individuals with disabilities in planning, implementing, and evaluating the projects (see section 661(f)(1)(A) of IDEA).

(c) The projects funded under this priority must budget for a two-day Project Directors' meeting in Washington, DC during each year of the project.

(d) If a project maintains a Web site, it must include relevant information and documents in an accessible form.

**IV. Application and Submission Information**

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.326R.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

*Page Limit:* The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 70 pages, using the following standards:

- A "page" is 8.5″ × 11″ on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, the references, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: March 11, 2004.

Deadline for Transmittal of Applications: April 26, 2004.

The dates and times for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this competition. The application package also specifies the hours of operation of the e-Application Web site.

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: June 25, 2004.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Instructions and requirements for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this competition.

Application Procedures:

**Note:** Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications: We are continuing to expand our pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. Special Education—Technical Assistance and Dissemination of Services and Results for Children with Disabilities—Regional Resource Centers competition—CFDA Number 84.326R is one of the competitions included in the pilot project. If you are an applicant under the Special Education—Technical Assistance and Dissemination of Services and Results for Children with Disabilities—Regional Resource Centers competition, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application). If you use e-Application

you will be entering data online while completing your application. You may not e-mail an electronic copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter online will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for its improvement.

If you participate in e-Application, please note the following:

- Your participation is voluntary.
- When you enter the e-Application system, you will find information about its hours of operation. We strongly recommend that you do not wait until the application deadline date to initiate an e-Application package.
- You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.
- You may submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Your e-Application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within three working days of submitting your electronic application, fax a signed copy of the Application for Federal Education Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from e-Application.
2. The institution's Authorizing Representative must sign this form.
3. Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.
4. Fax the signed ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you elect to participate in the e-Application pilot for the Special Education—Technical Assistance and Dissemination of Services and Results for Children with Disabilities—Regional Resource Centers competition and you are prevented from submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail or hand delivery. We will grant this extension if—

1. You are a registered user of e-Application, and have initiated an e-Application for this competition; and
2. (a) The e-Application system must be unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time) on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgement of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (*see* VII. Agency Contact) or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for the Special Education—Technical Assistance and Dissemination of Services and Results for Children with Disabilities—Regional Resource Centers competition at: *http://e-grants.ed.gov*.

## V. Application Review Information

*Selection Criteria:* The selection criteria for this competition are listed in 34 CFR 75.210 of EDGAR. The specific selection criteria to be used for this competition are in the application package.

## VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* Under the Government Performance and Results Act (GPRA), the Department is currently developing measures that will yield information on various aspects of the quality of the Technical Assistance to Improve Services and Results for Children with Disabilities program (*e.g.*, the extent to which projects use high quality methods and materials, provide useful products and services, and contribute to improving results for children with disabilities (States report improved ability to provide technical assistance as a result of projects and demonstrate improved results for children with disabilities)). Data on these measures will be collected from the projects funded under this notice.

Grantees will also be required to report information on their projects' performance in annual reports to the Department (EDGAR, 34 CFR 75.590).

## VII. Agency Contact

**FOR FURTHER INFORMATION CONTACT:** The Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: 1–202–205–8207.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the Grants and Contracts Services Team listed in this section.

## VIII. Other Information

*Electronic Access to This Document:* You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/news/fedregister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–

888–293–6498; or in the Washington, DC, area at (202) 512–1530:

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *www.gpoaccess.gov/nara/index.html.*

Dated: March 4, 2004.

**Troy R. Justesen,**

*Acting Deputy Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 04–5389 Filed 3–9–04; 8:45 am]

**BILLING CODE 4000–01–P**

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## DEPARTMENT OF EDUCATION

### Office of Special Education and Rehabilitative Services; Overview Information; Training and Information for Parents of Children with Disabilities—Community Parent Resource Centers; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2004

*Catalog of Federal Domestic Assistance (CFDA) Number: 84.328C.*

**DATES:** Applications Available: March 11, 2004.

*Deadline for Transmittal of Applications:* April 16, 2004.

*Deadline for Intergovernmental Review:* June 15, 2004.

*Eligible Applicants:* Local parent organizations. The full definitions of Local Parent Organization and Parent Organization are provided in Section III, 1. Eligible Applicants.

*Estimated Available Funds:* $1,000,000.

*Estimated Average Size of Awards:* $100,000.

*Maximum Award:* We will reject any application that proposes a budget exceeding $100,000 for a single budget period of 12 months. The Assistant Secretary for the Office of Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

*Estimated Number of Awards:* 10.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 36 months.

**Full Text of Announcement**

**I. Funding Opportunity Description**

*Purpose Of Program:* The purpose of this program is to ensure that parents of children with disabilities receive training and information to help improve results for their children.

*Priority:* In accordance with 34 CFR 75.105(b)(2)(iv), this priority is from allowable activities specified in the statute (see sections 661(e)(2) and 683 of the Individuals with Disabilities Education Act (IDEA)).

*Absolute Priority:* For FY 2004 this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

*Background:* The purpose of this priority is to support community training and information centers in targeted communities that will help ensure that underserved parents of children with disabilities, including low-income parents, parents of children who are English language learners, and parents with disabilities in a community, have the training and information they need to enable them to participate effectively in helping their children with disabilities to —

(a) Meet established developmental goals and challenging standards that have been established for all children; and

(b) Prepare to lead productive adult lives, as independently as possible.

*Priority:* Each community parent training and information center supported under this priority must—

(a) Provide training and information that meets the training and information needs of parents of children with disabilities within the targeted community proposed to be served by the project, particularly underserved parents and parents of children who may be inappropriately identified;

(b) Assist parents to understand the availability of, and how to effectively use, procedural safeguards under section 615 of IDEA, including encouraging the use, and explaining the benefits, of alternative methods of dispute resolution, such as the mediation process described in IDEA;

(c) Serve the parents of infants, toddlers, and children with the full range of disabilities by assisting parents to—

(1) Better understand the nature of their children's disabilities and their educational and developmental needs;

(2) Communicate effectively with personnel responsible for providing special education, early intervention, and related services;

(3) Participate in decisionmaking processes regarding participation in State and local assessments and the development of individualized education programs and individualized family service plans;

(4) Obtain appropriate information about the range of options, programs, services, and resources available to assist children with disabilities and their families;

(5) Familiarize themselves with the provision of special education and related services in the areas they serve to help ensure that children with disabilities are receiving appropriate services;

(6) Understand the provisions of IDEA and the No Child Left Behind Act of 2001 (NCLB) for the education of, and the provision of early intervention services designed to improve results to, children with disabilities; and

(7) Participate in school reform activities;

(d) Contract with the State educational agencies (SEAs), if the State elects to contract with the community parent resource centers, for the purpose of meeting with parents who choose not to use the mediation process to encourage the use, and explain the benefits, of mediation, consistent with section 615(e)(2)(B) and (D) of IDEA;

(e) In order to serve parents and families of children with the full range of disabilities, network with appropriate clearinghouses, including organizations conducting national dissemination activities under section 685(d) of IDEA, and with other national, State, and local organizations and agencies, such as protection and advocacy agencies;

(f) Establish cooperative partnerships with the parent training and information centers funded under section 682 of IDEA;

(g) Meet the unique needs of families who experience significant isolation from available sources of information and support;

(h) Annually report to the Department on—

(1) The number of parents to whom it provided information and training in the most recently concluded fiscal year, including demographic information about those parents served, and additional information regarding the unique needs and levels of service provided;

(2) The effectiveness of strategies used to reach and serve parents, including underserved parents of children with disabilities, by providing evidence of how those parents were served effectively; and

(i) In collaboration with the Office of Special Education Programs and the National Parent Technical Assistance Center, participate in the annual program evaluation for the community parent resource centers, which will include a review of the degree to which the center is meeting the objectives of the program.

(j) Prior to developing any new product, whether paper or electronic, submit for approval a proposal describing the content and purpose of

the product to the document review board of the Office of Special Education Programs' (OSEP) Dissemination Center.

*Competitive Preference Priorities:* Within this absolute priority, we give competitive preference to applications that address the following priorities.

These priorities are from the program statute (see section 683 of IDEA).

Under 34 CFR 75.105(c)(2)(i) we award additional points to an application depending on whether the application meets one or more of these priorities:

These priorities are:

(a) We will award 20 points to an application submitted by a local parent organization that has a board of directors, the majority of whom are parents of children with disabilities, from the community to be served (section 683(c)(1) of IDEA).

(b) We will award 5 points to an application that proposes to provide services to one or more Empowerment Zones or Enterprise Communities that are designated within the areas served by projects. To meet this priority an applicant must indicate that it will—

(1)(i) Design a program that includes special activities focused on the unique needs of one or more Empowerment Zones or Enterprise Communities; or

(ii) Devote a substantial portion of program resources to providing services within, or meeting the needs of residents of these zones and communities.

(2) As appropriate, contribute to the strategic plan of the Empowerment Zones or Enterprise Communities and become an integral component of the Empowerment Zone or Enterprise Community activities.

A list of areas that have been selected as Empowerment Zones or Enterprise Communities can be found at *http://hud.esri.com/egis/cpd/rcezec/ezec_open.htm.*

Therefore, for purposes of these competitive preferences, applicants can be awarded up to a total of 25 points in addition to those awarded under the published selection criteria for this priority. That is, an applicant meeting all of these competitive preferences could earn a maximum total of 125 points.

*Waiver of Proposed Rulemaking:* Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities. However, section 661(e)(2) of IDEA makes the public comment requirements inapplicable to the priorities in this notice.

*Program Authority:* 20 U.S.C. 1483.

*Applicable Regulations:* The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 97, 98, and 99.

**Note:** The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

## II. Award Information

*Type of Award:* Discretionary grants.

*Estimated Available Funds:* $1,000,000.

*Estimated Average Size of Awards:* $100,000.

*Maximum Award:* We will reject an application that proposes a budget exceeding $100,000 for a single budget period of 12 months. The Assistant Secretary for the Office of Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

*Estimated Number of Awards:* 10.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 36 months.

## III. Eligibility Information

1. *Eligible Applicants:* Local parent organizations. Section 683(c) defines a "local parent organization" as a parent organization that must meet either one of the following criteria:

(a) Has a Board of Directors, the majority of whom are from the community to be served; or

(b) Has—

(1) as part of its mission, serving the interests of individuals with disabilities from that community; and

(2) a special governing committee to administer the project. A majority of the governing committee members must be individuals from the community to be served.

Section 682(g) of IDEA defines a "parent organization" as a private nonprofit organization (other than an institution of higher education) that:

(a) Has a board of directors—

(1) The parent and professional members of which are broadly representative of the population to be served;

(2) The majority of whom are parents of children with disabilities; and

(3) That includes individuals with disabilities and individuals working in the fields of special education, related services, and early intervention; or

(b) Has a membership that represents the interests of individuals with disabilities and has established a special governing committee meeting the requirements for a board of directors in paragraph (a) and has a memorandum of understanding between this special governing committee and the board of directors of the organization that clearly outlines the relationship between the board and the committee and the decisionmaking responsibilities and authority of each.

2. *Cost Sharing or Matching:* This competition does not involve cost sharing or matching.

3. *Other: General Requirements*—(a) The projects funded under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Applicants and grant recipients funded under this notice must involve individuals with disabilities or parents of individuals with disabilities in planning, implementing, and evaluating the projects (see section 661(f)(1)(A) of IDEA).

(c) The projects funded under this priority must budget for a two-day Project Directors' meeting in Washington, DC during each year of the project.

(d) If a project maintains a Web site, it must include relevant information and documents in an accessible form.

## IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA Number 84.328C.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the Grants and Contract Services Team listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

*Page Limit:* The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate

your application. You must limit Part III to the equivalent of no more than 30 pages, using the following standards:

• A "page" is 8.5" x 11" on one side only, with 1" margins at the top, bottom, and both sides.

• Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, and captions, as well as all text in charts, tables, figures, and graphs.

• Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the résumés, the bibliography, the references, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject your application if—

• You apply these standards and exceed the page limit; or

• You apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: March 11, 2004.

Deadline for Transmittal of Applications: April 16, 2004.

The dates and times for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this competition. The application package also specifies the hours of operation of the e-Application Web site.

We do not consider an application that does not comply with the deadline requirements.

*Deadline for Intergovernmental Review:* June 15, 2004.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Instructions and requirements for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this competition.

*Application Procedures:*

**Note:** Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications: We are continuing to expand our pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. Special Education—Training and Information for Parents of Children with Disabilities Program—Community Parent Resource Centers—CFDA Number 84.328C—is one of the competitions included in the pilot project. If you are an applicant under the Special Education—Training and Information for Parents of Children with Disabilities Program—Community Parent Resource Centers competition, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application). If you use e-Application you will be entering data online while completing your application. You may not e-mail an electronic copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter online will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for its improvement.

If you participate in e-Application, please note the following:

• Your participation is voluntary.

• When you enter the e-Application system, you will find information about its hours of operation. We strongly recommend that you do not wait until the application deadline date to initiate an e-Application package.

• You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.

• You may submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• Your e-Application must comply with any page limit requirements described in this notice.

• After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).

• Within three working days of submitting your electronic application, fax a signed copy of the Application for Federal Education Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from e-Application.

2. The institution's Authorizing Representative must sign this form.

3. Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.

4. Fax the signed ED 424 to the Application Control Center at (202) 260–1349.

• We may request that you give us original signatures on other forms at a later date.

*Application Deadline Date Extension in Case of System Unavailability:* If you elect to participate in the e-Application pilot for the Special Education—Training and Information for Parents of Children with Disabilities Program—Community Parent Resource Centers competition and you are prevented from submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail or hand delivery. We will grant this extension if—

1. You are a registered user of e-Application, and have initiated an e-Application for this competition; and

2. (a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time) on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgement of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (*see* VII. Agency Contact) or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for the Special Education—Training and Information for Parents of Children with Disabilities Program—

Community Parent Resource Centers competition at: *http://e-grants.ed.gov.*

**V. Application Review Information**

*Selection Criteria:* The selection criteria for this competition are listed in 34 CFR 75.210 of EDGAR. The specific selection criteria to be used for this competition are in the application package.

**VI. Award Administration Information**

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* heading, in section I of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* heading, in section I of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* Under the Government Performance and Results Act (GPRA), measures have been developed for evaluating the overall effectiveness of this program. Requirements concerning the performance measures are in the application package for this competition.

**VII. Agency Contact**

**FOR FURTHER INFORMATION CONTACT:** The Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: 1–202–205–8207.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the Grants and Contracts Services Team listed in this section.

**VIII. Other Information**

*Electronic Access to This Document:* You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: www.gpoaccess.gov/nara/index.html.

Dated: March 4, 2004.

**Troy R. Justesen,**

*Acting Deputy Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 04–5390 Filed 3–9–04; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

### Brown v. Board of Education 50th Anniversary Commission; Meeting

**AGENCY:** Brown v. Board of Education 50th Anniversary Commission, Department of Education (ED).

**ACTION:** Notice of meeting.

**SUMMARY:** This notice provides the schedule of a forthcoming meeting of the Brown v. Board of Education 50th Anniversary Commission. This notice also describes the functions of the commission. This document is intended to notify the general public of their opportunity to attend.

**DATE AND TIME:** March 16, 2004, at 3 p.m.

**ADDRESSES:** Kansas Union, Kansas University, 1301 Jayhawk Blvd., Big. 12 Room, Lawrence, KS 66045–7548.

**FOR FURTHER INFORMATION CONTACT:** Mary McPhail, 330 C Street SW., Washington, DC 20202, (202) 205–9529.

**SUPPLEMENTARY INFORMATION:** The Brown v. Board of Education 50th Anniversary Commission is established under Pub. L. 107–41 to commemorate the 50th anniversary of the Brown decision. The Commission, in conjunction with the U.S. Department of Education, is responsible for planning and coordinating public education activities and initiatives. Also, the Commission, in cooperation with the Brown Foundation for Educational Equity, Excellence, and Research in Topeka, Kansas, and such other public or private entities as the Commission deems appropriate, is responsible for encouraging, planning, developing and coordinating observances of the anniversary of the Brown decision. The meeting of the Commission is open to the public. Individuals who will need accommodations for a disability in order to attend the meeting (*i.e.* interpreting services, assistive listening devices, materials in alternative format) should notify Mary McPhail at (202) 205–9529 by no later than March 12, 2004. We will attempt to meet requests after that date, but cannot guarantee availability.

Dated: March 4, 2004.

**Kenneth L. Marcus,**

*Senior Counselor for Civil Rights.*

[FR Doc. 04–5301 Filed 3–9–04; 8:45 am]

**BILLING CODE 4000–01–M**

## DEPARTMENT OF EDUCATION

**[CFDA Nos. 84.007, 84.032, 84.033, 84.038, 84.063, 84.069, and 84.268]**

### Student Assistance General Provisions, Federal Supplemental Educational Opportunity Grant, Federal Family Education Loan, Federal Work-Study, Federal Perkins Loan, Federal Pell Grant, Leveraging Educational Assistance Partnership, and William D. Ford Federal Direct Loan Programs

**ACTION:** Notice of deadline dates for receipt of applications, reports, and other records for the 2003–2004 award year.

**SUMMARY:** The Secretary announces deadline dates for the receipt of documents and other information from institutions and applicants for the Federal student aid programs authorized under Title IV of the Higher Education Act of 1965, as amended, for the 2003–2004 award year. The Federal student aid programs include the Federal Perkins Loan, Federal Work-Study, Federal Supplemental Educational Opportunity Grant, Federal Family Education Loan, William D. Ford Federal Direct Loan, Federal Pell Grant, and Leveraging Educational Assistance Partnership programs.

These programs, administered by the U.S. Department of Education

(Department), provide financial assistance to students attending eligible postsecondary educational institutions to help them pay their educational costs.

*Deadline and Submission Dates: See* Tables A and B at the end of this notice.

**Table A—Deadline Dates for Application Processing and Receipt of Student Aid Reports (SARs) or Institutional Student Information Records (ISIRs) by Institutions**

Table A provides deadline dates for application processing, including corrections, and, for purposes of the Federal Pell Grant Program, receipt by institutions of SARs or ISIRs.

**Table B—Federal Pell Grant Program Submission Dates for Disbursement Information by Institutions**

Table B provides the earliest submission and deadline dates for institutions to submit Federal Pell Grant disbursement records to the Department's Common Origination and Disbursement (COD) System.

In general, an institution must submit Federal Pell Grant disbursement records no later than 30 days after making a disbursement or becoming aware of the need to adjust a student's previously reported Federal Pell Grant disbursement. We consider that Federal Pell Grant funds are disbursed on the earlier of the date that the institution: (a) Credits those funds to a student's account in the institution's general ledger or any subledger of the general ledger, or (b) pays those funds to a student directly. We consider that Federal Pell Grant funds are disbursed even if an institution uses its own funds in advance of receiving program funds from the Department [34 CFR 668.164(a)]. An institution's failure to submit disbursement records within the required 30-day timeframe may result in an audit or program review finding. In addition, the Secretary may initiate an adverse action, such as a fine or other penalty for such failure.

**Other Sources for Detailed Information**

We publish a detailed discussion of the Federal student aid application process in the following publications:

- *2003–2004 Student Guide.*
- *Funding Your Education.*
- *2003–2004 High School Counselor's Handbook.*
- *A Guide to 2003–2004 SARs and ISIRs.*
- *2003–2004 Federal Student Aid Handbook.*

Additional information on the institutional reporting requirements for the Federal Pell Grant Program is contained in Volume 3, Chapter 3 of the 2003–2004 *Federal Student Aid Handbook,* which is available at the Information for Financial Aid Professionals Web site at: *http://www.ifap.ed.gov.*

*Applicable Regulations:* The following regulations apply: (1) Student Assistance General Provisions, 34 CFR part 668 and (2) Federal Pell Grant Program, 34 CFR part 690.

**FOR FURTHER INFORMATION CONTACT:** Harold McCullough, U.S. Department of Education, Federal Student Aid, 830 First Street, NE., Union Center Plaza, room 93B2, Washington, DC 20202–5345. Telephone: (202) 377–4030.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT.**

**Electronic Access to This Document**

You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

You may also view this document in PDF at the following site: *http://www.ifap.ed.gov.*

**Note:** The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*

**Program Authority:** 20 U.S.C. 421–429, 1070a, 1070b–1070b-3, 1070c–1070c-4, 1071–1087–2, 1087a, and 1087aa–1087ii; 42 U.S.C. 2751–2756b.

Dated: March 4, 2004.

**Theresa S. Shaw,**

*Chief Operating Officer, Federal Student Aid.*

BILLING CODE 4000–01–P

Table A. Deadline Dates for Application Processing and Receipt of Student Aid Reports (SARs) or Institutional Student Information Records (ISIRs) by Institutions

| Who Submits? | What is Submitted? | Where is it Submitted? | What is the Deadline Date for Receipt? |
|---|---|---|---|
| Student | Free Application for Federal Student Aid (FAFSA) on the Web or Renewal FAFSA on the Web | Electronically to the Department's Central Processing System (CPS) | June 30, 2004[1] |
| | Signature Page (if required) | To the address printed on the signature page | July 14, 2004 |
| Student through an Institution | An electronic original or Renewal FAFSA | Electronically to the Department's CPS | June 30, 2004[1] |
| Student | A paper original FAFSA or paper Renewal FAFSA | To the address printed on the FAFSA, Renewal FAFSA, or envelope provided with the form | June 30, 2004 |
| Student | Corrections on the Web with all required electronic signatures | Electronically to the Department's CPS | September 17, 2004[1] |
| Student | Corrections on the Web needing paper signatures | Electronically to the Department's CPS | September 9, 2004[1] |
| | Paper signatures for Corrections on the Web | To the address printed on the signature page | September 14, 2004 |
| Student through an Institution | Electronic corrections and requests for a duplicate Student Aid Report (SAR) | Electronically to the Department's CPS | September 17, 2004[1] |
| Student | Paper corrections (including change of mailing and email addresses, institutions, or requests for a duplicate SAR) using Part 2 of a SAR | To the address printed on Part 2 of the SAR | September 6, 2004 |
| Student | Change of mailing and email addresses, change of institutions, or requests for a duplicate SAR | To the Federal Student Aid Information Center by calling 1-800-433-3243 | September 17, 2004 |
| Student | SAR with an official expected family contribution (EFC) calculated by the Department's CPS (Pell Only) | To the institution | The earlier of:<br>- the student's last date of enrollment; or<br>- September 17, 2004[2] |
| Student through CPS | ISIR with an official EFC calculated by the Department's CPS (Pell Only) | To the institution from the Department's CPS | The earlier of:<br>- the student's last date of enrollment; or<br>- September 17, 2004[2] |

| | | | |
|---|---|---|---|
| Student | Valid SAR (Pell Only) | To the institution | Except for late disbursements under 34 CFR 668.164(g), the earlier of:<br>- the student's last date of enrollment; or<br>- September 17, 2004[2]<br>For late disbursements, the earlier of:<br>- the timeframes provided in the regulations at 34 CFR 668.164(g)(4)(i); or<br>- September 17, 2004[2] |
| Student through CPS | Valid ISIR (Pell Only) | To the institution from the Department's CPS | |
| Student | Verification documents | To the institution | The earlier of:[3]<br>- 120 days after the student's last date of enrollment; or<br>- September 17, 2004 |
| Student | Valid SAR after verification (For Pell Only) | To the institution | The earlier of:[4]<br>- 120 days after the student's last date of enrollment; or<br>- September 17, 2004[2] |
| Student through the Department's CPS | Valid ISIR after verification (For Pell Only) | To the institution from the Department's CPS | |

[1] The deadline for electronic transactions is 11:59 p.m. (Central Time) on the deadline date. Transmissions must be completed and accepted by 12:00 midnight to meet the deadline. If transmissions are started before 12:00 midnight but are not completed until after 12:00 midnight, those transmissions will not meet the deadline. In addition, any transmission picked up on or just prior to the deadline date that is rejected may not be reprocessed because the deadline will have passed by the time the user gets the information notifying him/her of the rejection.

[2] The date the ISIR/SAR transaction was processed by CPS is considered to be the date the institution received the ISIR or SAR regardless of whether the institution has downloaded the ISIR from its SAIG mailbox.

[3] Although the Secretary has set this deadline date for the submission of verification documents, if corrections are required, deadline dates for submission of paper or electronic corrections and the submission of a valid SAR or valid ISIR to the institution must still be met.

[4] Students completing verification while no longer enrolled will be paid based on the higher of the two EFCs.

| Table B. Federal Pell Grant Program Submission Dates for Disbursement Information by Institutions | | | |
|---|---|---|---|
| Who Submits? | What is Submitted? | Where is it Submitted? | What is the Earliest Submission and Deadline Date for Receipt? |
| Institutions | At least one acceptable disbursement record must be submitted for each Federal Pell Grant recipient at the institution. | To the Common Origination and Disbursement (COD) System using either:<br>- the COD website at: http://cod.ed.gov; or<br>- the Student Aid Internet Gateway (SAIG) | Earliest Submission Dates:<br>An institution may submit disbursement information as early as June 21, 2003, but no earlier than:<br>(a) 30 calendar days prior to the disbursement date under the advance payment method;<br>(b) 7 calendar days prior to the disbursement date under the Just-in-Time or Cash Monitoring #1 payment methods; or<br>(c) the date of disbursement under the Reimbursement or Cash Monitoring #2 payment methods.<br>Deadline Submission Dates:<br>Except as provided below, an institution is required to submit disbursement information no later than the earlier of:<br>(a) 30 calendar days after the institution makes a disbursement or becomes aware of the need to make an adjustment to previously reported disbursement data; or<br>(b) September 30, 2004.[1]<br>An institution may submit disbursement information after September 30, 2004, only:<br>(a) for a downward adjustment of a previously reported award;<br>(b) based upon a program review or initial audit finding per 34 CFR 690.83;<br>(c) for reporting a late disbursement under 34 CFR 668.164(g); or<br>(d) for reporting disbursements previously blocked as a result of another institution failing to post a downward adjustment. |

| | | |
|---|---|---|
| Request for administrative relief based on a natural disaster or other unusual circumstances, or an administrative error made by the Department | By email to: sfa.administrative.relief@ed.gov | The earlier of:<br>- a date designated by the Secretary after consultation with the institution; or<br>- January 31, 2005 |
| Request for administrative relief for a student[2] who reenters the institution (1) within 180 days after initially withdrawing and (2) after September 15, 2004 | By email to: sfa.administrative.relief@ed.gov | The earlier of:<br>- 30 days after the student reenrolls; or<br>- May 2, 2005 |

[1] The deadline for electronic transactions is 11:59 p.m. on September 30, 2004. Transmissions must be completed and accepted by 12:00 midnight to meet the deadline. If transmissions are started before 12:00 midnight but are not completed until after 12:00 midnight, those transmissions will not meet the deadline. In addition, any transmission picked up on or just prior to the deadline date that is rejected may not be reprocessed because the deadline will have passed by the time the user gets the information notifying him/her of the rejection.

[2] Applies only to students enrolled in clock-hour and nonterm credit-hour educational programs.

NOTE: The COD System must accept origination data for a student from an institution before it accepts disbursement information from the institution for that student. Institutions may submit origination and disbursement data for a student in the same transmission. However, if the origination data is rejected, the disbursement data is rejected.

[FR Doc. 04–5391 Filed 3–9–04; 8:45 am]
BILLING CODE 4000–01–C

## DEPARTMENT OF ENERGY

### Office of Science Financial Assistance Program Notice DE–FG01–04ER04–17; Innovative Technologies for In Vivo Targeted Radiopharmaceutical Dose Delivery and Deposition

**AGENCY:** Department of Energy (DOE).

**ACTION:** Notice inviting grant applications.

**SUMMARY:** The Office of Biological and Environmental Research (OBER) of the Office of Science (SC), U.S. Department of Energy (DOE), hereby announce its interest in receiving grant applications to support one specific research area within the Medical Applications Program: Innovative Technologies for *In Vivo* Targeted Radiopharmaceutical Dose Delivery and Deposition. The emphasis will be on the therapeutic use of ionizing radiation. The specific goals include: (1) development of radiochemical methodologies for labeling the targeting molecules with and for site-specific delivery of therapeutic dose levels of radioactivity, and (2) development of radiobiology-based-microdosimetry techniques to accurately measure and predict the potential therapeutic use, dose and dose rate delivery of ionizing radiation. Applicants are encouraged to propose innovative methodologies and technologies to label biological ligands with therapeutic level radioactivity, ensure *in vivo* delivery of intact radioisotopically labeled molecules to specific tumor cell types, and develop novel microdosimetry paradigms. Applications for clinical trials using already developed compounds and techniques will not be considered.

**DATES:** Before preparing a formal application, potential applicants are encouraged to submit a brief preapplication. All preapplications referencing Program Notice DE–FG01–04ER04–17, should be received by DOE by 4:30 p.m., eastern time, April 12, 2004. A response encouraging or discouraging the submission of a formal application will be communicated by electronic mail within approximately 2 weeks.

Formal applications submitted in response to this notice must be received by 4:30 p.m., eastern time, June 15, 2004, to be accepted for merit review and be considered for award in Fiscal Year 2004 or early 2005.

**ADDRESSES:** Preapplications referencing Program Notice DE–FG01–04ER04–17, are to be sent, if possible, by e-mail or fax to Ms. Sharon Betson (*sharon.betson@science.doe.gov*; fax: 301–903–0567). Preapplications will also be accepted if mailed to the following address: Ms. Sharon Betson, Office of Biological and Environmental Research, SC–73, 19901 Germantown Road, Germantown, MD 20874–1290.

Formal applications referencing Program Notice DE–FG01–04ER04–17, must be sent electronically by an authorized institutional business official through DOE's Industry Interactive Procurement System (IIPS) at: *http://e-center.doe.gov/*. IIPS provides for the posting of solicitations and receipt of applications in a paperless environment via the Internet. In order to submit applications through IIPS, your business official will need to register at the IIPS website. IIPS offers the option of using multiple files, please limit submissions to one volume and one file if possible, with a maximum of no more than four PDF files. The Office of Science will include attachments as part of this notice that provide the appropriate forms in PDF fillable format that are to be submitted through IIPS. Color images should be submitted in IIPS as a separate file in PDF format and identified as such. These images should be kept to a minimum due to the limitations of reproducing them. They should be numbered and referred to in the body of the technical scientific grant application as Color image 1, Color image 2, etc. Questions regarding the operation of IIPS may be e-mailed to the IIPS Help Desk at: *HelpDesk@pr.doe.gov*, or you may call the help desk at: (800) 683–0751. Further information on the use of IIPS by the Office of Science is available at: *http://www.sc.doe.gov/production/grants/grants.html*.

If you are unable to submit an application through IIPS, please contact the Grants and Contracts Division, Office of Science at: (301) 903–5212 or (301) 903–3604, in order to gain assistance for submission through IIPS or to receive special approval and instructions on how to submit printed applications.

**FOR FURTHER INFORMATION CONTACT:** Prem C. Srivastava, Ph.D., Office of Biological and Environmental Research, Medical Sciences Division, SC–73, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, telephone: (301) 903–4071, fax: (301) 903–0567, e-mail: *prem.srivastava@science.doe.gov*. The full text of Program Notice DE–FG01–04ER04–17 is available via the Internet using the following Web site address: *http://www.sc.doe.gov/production/grants/grants.html*.

**SUPPLEMENTARY INFORMATION:** The BER Medical Applications Program supports directed nuclear medicine technology research in the areas of radiopharmaceutical development, molecular nuclear medicine and advanced biomedical imaging to promote the use of radioisotopes for non-invasive diagnosis and therapy.

The early BER programs focused on understanding the physical, chemical and biologic consequences of radionuclide decay in the human body. Those studies led to much of the basic information that is still used today to describe the therapeutic effects of targeted radionuclides. DOE continued to fund projects and develop technologies for therapeutic effect and use of radiation that generated much of the current knowledge in radioisotope chemistry, identification of targeting agents, methods for chemical coupling of isotopes to targeting agents, scanning and imaging techniques, mathematical modeling and internal radiation dosimetry. This research has formed the basis for many current cancer targeted radionuclide therapy modalities in various stages of development.

Current themes have developed about radiation's main molecular targets, absorbed energy doses and resultant radiation damage. This has led to the development of defined absorbed doses (Gy, Sv) that dominate our predictions about tumor destruction and normal tissue damage. Most radiobiology has been focused on radiation damage induced by high dose rate gamma and neutron exposures. Targeting with electrons, alpha and beta emitters employed at intermediate to low dose rate intensities requires a much better understanding of radiation damage to cells, and new paradigms need to be addressed to understand how best to use radioisotopes for selective destruction of solid tumors as compared to normal tissue. The recent emphasis on targeted radiopharmaceutical therapy agents against many forms of cancer has brought about an increase in the need for reliable and clinically meaningful, patient-specific internal dose calculations. The ability to link radiation dose to observed biological effect of radiation is complicated by a number of factors, including the heterogeneity of the activity distribution within normal organ tissue or within tumors, the range of the particles delivering the therapeutic dose, the total dose received, the dose rate at which the dose is delivered, (which depends on

the radionuclide half-life), and the radiosensitivity of the tumor cells.

Basic research in molecular biology has provided new insights to the molecular basis of human disease and its potential molecular targets. DOE's current Molecular Nuclear Medicine Program encourages development of new technologies for molecular delivery of radioisotopes to disease target sites with a high degree of precision, recognition, and target selectivity. The availability of new technology for high resolution imaging of small animals should facilitate the evaluation of the biological effects of ionizing radiation.

This notice is to solicit grant applications for developing innovative technologies for *in vivo* targeted radiopharmaceutical dose delivery and improved radiotoxic dose deposition in the target as compared to normal tissue. A well integrated team effort by scientists from overlapping disciplines of radiochemistry, radiopharmaceutical chemistry, cellular and molecular radiobiology, radiation oncology, targeted radiation therapy, microdosimetry and modeling will be important. Methodological approaches and sensitive technologies that can be adapted to deliver, deposit, measure and predict therapeutic levels of radiation dose to the target sites are sought. It will be important for each application to address also the following objectives:

1. Radiolabeling of targeting molecules at therapeutic dose levels of radioactivity.

2. Considerations of radiochemical and *in vivo* biological viability (activity, stability, target specificity, and selectivity) of the molecule, against sensitivity to structural perturbations in the molecule as a result of radiolabeling.

3. Radiopharmaceutical delivery of intact radioisotopically labeled molecules to tumor cells in therapeutic dose amounts.

4. Innovative measurement techniques for evaluating biological effects of therapeutic radiation at low dose rates *in vivo* at the molecular, cellular and metabolic levels.

5. Modeling and microdosimetry methods for understanding the biological effects of radiation at the cellular and subcellular level for guiding predictions about optimum radiation dose, radiation dose rate, and resultant tumor destruction and normal tissue damage.

6. Measurement techniques for accurately assessing the success of tumor targeting *in vivo*.

7. The research plan will support BER Medical Applications long term performance goals in scientific advancement by providing innovative radiopharmaceutical methodologies or technologies for use in solid tumor cell destruction. Applicants should note that only a methodology or a technology offering promise for intended use, and not the experimental data resulting from the proposed research will be considered an accomplishment and will contribute to the measures of performance.

**Program Funding**

It is anticipated that up to $2 million will be available for multiple awards starting Fiscal Year 2004 to Fiscal Year 2005, contingent upon the availability of appropriated funds and the scientific merit of the submitted applications. Previous awards have ranged from $200,000 to $400,000 per year (direct plus indirect costs) with terms lasting up to three years. Award sizes of approximately $400,000–$500,000 are anticipated for new, well integrated, multidisciplinary research grants. Applications may request project support up to three years, with out-year support contingent on the availability of appropriated funds, satisfactory progress in the research proposed, and programmatic needs.

**Preapplications**

A brief preapplication should be submitted. The cover sheet of the preapplication should list the title of the project, the institution, and the principal investigator's name, address, telephone, fax, and e-mail address. The preapplication should not exceed two pages (in addition to the cover sheet). It should identify and describe the research objectives, the methods proposed for accomplishment of the research, and the key members of the scientific team responsible for this effort. Preapplications will be evaluated relative to the scope and objectives of this solicitation.

**Merit Review**

Applications will be subjected to scientific merit review (peer review) and will be evaluated against the following evaluation criteria listed in descending order of importance as codified at 10 CFR 605.10(d):

1. Scientific and/or technical merit of the project;

2. Appropriateness of the proposed approach and methods;

3. Competency of the research team and adequacy of available resources;

4. Justification of the proposed budget.

The evaluation will include program policy factors such as the relevance of the proposed research to the terms of the announcement and the agency's programmatic needs. It should be noted that external peer reviewers are selected on the basis of their scientific expertise and the absence of conflict-of-interest issues. Non-Federal reviewers may be used, and submission of an application constitutes agreement that this review process is acceptable to the investigator(s) and the submitting institution.

**Submission Information**

Information about the development, submission of applications, eligibility, limitations, evaluation, the selection process, and other policies and procedures may be found in 10 CFR part 605, and in the Application Guide for the Office of Science Financial Assistance Program. Electronic access to the Guide and required forms is made available via the World Wide Web at: *http://www.sc.doe.gov/production/grants/grants.html*. DOE is under no obligation to pay for any costs associated with the preparation or submission of applications if an award is not made. In addition, in response to this notice, the project description must be 25 pages or less, exclusive of attachments, and the application must contain a table of contents, an abstract or project summary, letters of intent from collaborators (if any), and short curriculum vitae, consistent with National Institutes of Health guidelines. Block 15 of the SC grant face page (form DOE F4650.2) should list the PI's phone number, fax number, and e-mail address.

DOE policy requires that potential applicants adhere to 10 CFR part 745 "Protection of Human Subjects" or such later revision of those guidelines as may be published in the **Federal Register**. The Office of Science as part of its grant regulations requires at 10 CFR 605.11(b) that a recipient receiving a grant and performing research involving recombinant DNA molecules and/or organisms and viruses containing recombinant DNA molecules shall comply with NIH "Guidelines for Research Involving Recombinant DNA Molecules," which is available via the World Wide Web at: *http://www.niehs.nih.gov/odhsb/biosafe/nih/rdna-apr98.pdf* (59 FR 34496, July 5, 1994) or such later revision of those guidelines as may be published in the **Federal Register**.

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605.

Issued in Washington, DC, March 3, 2004.

**Martin Rubinstein,**

*Acting Director, Grants and Contracts Division, Office of Science.*

[FR Doc. 04–5359 Filed 3–9–04; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Hanford

**AGENCY:** Department of Energy

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Hanford. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meeting be announced in the **Federal Register.**

**DATES:** Thursday, April 1, 2004, 9 a.m.–5 p.m., Friday, April 2, 2004, 8:30 a.m.–4 p.m.

**ADDRESSES:** Red Lion Hotel Richland, Hanford House, 802 George Washington Way, Richland, WA, Phone: (509) 946–7611, Fax: (509) 943–8564.

**FOR FURTHER INFORMATION CONTACT:** Yvonne Sherman, Public Involvement Program Manager, Department of Energy Richland Operations Office, 825 Jadwin, MSIN A7–75, Richland, WA, 99352; Phone: (509) 376–6216; Fax: (509) 376–1563.

**SUPPLEMENTARY INFORMATION:** *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

**Tentative Agenda**

*Thursday, April 1, 2004*

- Risk Base End States
- K Basins Sludge Path Forward
- Tank C–106
- Final Hanford Solid Waste-EIS

*Friday, April 2, 2004*

- Budget '05, '06 and out years
- Plutonium Finishing Plant update
- 300 Area update
- River Corridor Contract
- Committee Updates

*Public Participation:* The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Yvonne Sherman's office at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided equal time to present their comments.

*Minutes:* The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Yvonne Sherman, Department of Energy Richland Operation Office, 825 Jadwin, MSIN A7–75, Richland, WA 99352, or by calling her at (509) 376–1563.

Issued at Washington, DC, on March 5, 2004.

**Rachel M. Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 04–5362 Filed 3–9–04; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

**[Docket Nos. EA–287]**

### Application To Export Electric Energy; Emera Energy U.S. Subsidiary No. 1, Inc.

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of application.

**SUMMARY:** Emera Energy U.S. Subsidiary No. 1, Inc. (Emera Energy Sub No.1) has applied to export electric energy from the United States to Canada, pursuant to section 202(e) of the Federal Power Act.

**DATES:** Comments, protests or requests to intervene must be submitted on or before April 9, 2004.

**ADDRESSES:** Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Import/Export (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–287–5736).

**FOR FURTHER INFORMATION CONTACT:** Steven Mintz (Program Office) 202–586–9506 or Michael Skinker (Program Attorney) 202–586–2793.

**SUPPLEMENTARY INFORMATION:** Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On January 30, 2004, Emera Energy Sub No. 1 applied to the Department of Energy ("DOE") for authority to export electric energy from the Unites States to Canada. Emera Energy Sub No. 1, a Delaware corporation with its principal place of business in Rye, New Hampshire, is a wholly-owned direct subsidiary of Emera Incorporated, a Nova Scotia corporation that is a diversified energy and services company. Emera Energy Sub No. 1 does not own or control any electric generation or transmission facilities nor does it have a franchised service area. Emera Incorporated owns and operates transmission facilities in the United States through its operating divisions. Emera Energy Sub No. 1 will be engaged in the marketing of power as both a broker and as a marketer of electric power at wholesale. Emera Energy Sub No. 1 plans to purchase the power that it will export from cogeneration facilities, Federal power marketing agencies, electric utilities and exempt wholesale generators within the United States.

In FE Docket No. EA–287, Emera Energy Sub No. 1 proposes to export electric energy to Canada and to arrange for the delivery of those exports to Canada over the international transmission facilities owned by Eastern Maine Electric Cooperative, Joint Owners of the Highgate Project, Maine Electric Power Company, Maine Public Service Company, Vermont Electric Power Company, and Vermont Electric Transmission Company.

The construction of each of the international transmission facilities to be utilized by Emera Energy Sub No. 1 has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

*Procedural Matters:* Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the Emera Energy Sub No. 1 application to export electric energy to Canada should be clearly marked with Docket EA–287. Additional copies are to be filed directly with Calvin Bell, Emera Energy Services, Inc., One Cumberland Place, Suite 102, Bangor, ME 04401, Deborah C. Brentani, Wendy N. Reed, Wright & Talisman, P.C., 1200 G Street, NW.,

Suite 600, Washington, DC 20005 and Mr. Richard J. Smith, Assistant Secretary, Emera Energy U.S. Subsidiary No. 1, Inc., c/o Emera Incorporated, 1894 Barington Street, 18th Floor, Barrington Tower, P.O. Box 910, Halifax, Nova Scotia, CANADA B3J 2W5.

A final decision will be made on this application after the environmental impact has been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at *http://www.fe.doe.gov*. Upon reaching the Fossil Energy Home page, select "Electricity Regulation," and then "Pending Proceedings" from the options menus.

Issued in Washington, DC, on March 4, 2004.

**Ellen Russell,**

*Acting Deputy Director, Electric Power Regulation, Office of Coal & Power Import/Export, Office of Coal & Power Systems, Office of Fossil Energy.*

[FR Doc. 04–5360 Filed 3–9–04; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

**[FE Docket Nos. 04–09–NG, 04–06–NG, 04–04–LNG, 04–08–NG, 04–10–NG, 04–11–NG, 04–08–NG, 04–14–NG, 04–05–NG, 04–12–NG, 04–16–NG, 04–15–LNG, 04–18–NG, 04–13–NG, 04–19–NG, and 04–17–NG.]**

## Office of Fossil Energy; EPCOR Merchant and Capital (US) Inc., Chevron U.S.A. Inc., Excelerate Energy L.P., Oneok Energy Marketing and Trading Company, PPM Energy, Inc., Burlington Resources Canada Marketing Ltd., Oneok Energy Marketing and Trading Company, Oneok Energy Services Canada, Ltd., Petrocom Energy Group, Ltd., Devon Canada Marketing Corporation, Michigan Consolidated Gas Company, BG LNG Services, LLC, Entergy-Koch Trading Canada, ULC, Entergy-Koch Trading L.P., Coral Canada US Inc., and Sequent Energy Management, L.P.; Orders Granting and Vacating Authority To Import and Export Natural Gas, Including Liquefied Natural Gas

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of orders.

**SUMMARY:** The Office of Fossil Energy (FE) of the Department of Energy gives notice that during February 2004, it issued Orders granting and vacating authority to import and export natural gas, including liquefied natural gas. These Orders are summarized in the attached appendix and may be found on the FE Web site at *http://www.fe.doe.gov* (select gas regulation). They are also available for inspection and copying in the Office of Natural Gas & Petroleum Import & Export Activities, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The Docket Room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on March 3, 2004.

**Sally Kornfeld,**

*Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import & Export Activities, Office of Fossil Energy.*

APPENDIX—ORDERS GRANTING AND VACATING IMPORT/EXPORT AUTHORIZATIONS

[DOE/FE Authority]

| Order No. | Date issued | Importer/Exporter FE Docket No. | Import volume | Export volume | Comments |
|---|---|---|---|---|---|
| 1937 | 2–6–04 | EPCOR Merchant and Capital (US) Inc.. 04–09–NG | 22 Bcf | 33 Bcf | Import and export natural gas from and to Canada, beginning on January 25, 2004, and extending through January 24, 2006. |
| 1938 | 2–6–04 | Chevron U.S.A. Inc. 04–06–NG | 55 Bcf | | Import and export a combined total of natural gas from and to Canada, beginning on February 6, 2004, and extending through February 5, 2006. |
| 1939 | 2–6–04 | Excelerate Energy L.P. 04–04–LNG | 400 Bcf | | Import liquefied natural gas from various international sources beginning on December 1, 2004, and extending through November 30, 2006. |
| 1940 | 2–9–04 | ONEOK Energy Marketing and Trading Company. 04–08–NG | 150 Bcf | | Import and export a combined total of natural gas from and to Canada, beginning on February 9, 2004, and extending through February 8, 2006. |
| 1941 | 2–9–04 | PPM Energy, Inc. 04–10–NG | 150 Bcf | | Import and export a combined total of natural gas from and to Canada, beginning on July 1, 2003, and extending through June 30, 2005. |

APPENDIX—ORDERS GRANTING AND VACATING IMPORT/EXPORT AUTHORIZATIONS—Continued

[DOE/FE Authority]

| Order No. | Date issued | Importer/Exporter FE Docket No. | Import volume | Export volume | Comments |
|---|---|---|---|---|---|
| 1942 | 2–10–04 | Burlington Resources Canada Marketing Ltd.. 04–11–NG | 250 Bcf | | Import and export a combined total of natural gas from and to Canada, beginning on March 31, 2004, and extending through March 30, 2006. |
| 1940-A | 2–12–04 | ONEOK Energy Marketing and Trading Company. 04–08–NG | | | Vacate import and export blanket authority. |
| 1943 | 2–12–04 | ONEOK Energy Services Canada, LTD.. 04–14–NG | 150 Bcf | | Import and export a combined total of natural gas from and to Canada, beginning on February 12, 2004, and extending through February 11, 2006. |
| 1944 | 2–13–04 | Petrocom Energy Group, Ltd. 04–05–NG | 73 Bcf | 73 Bcf | Import and export natural gas from and to Canada and Mexico, beginning on February 14, 2004, and extending through February 13, 2006. |
| 1945 | 2–18–04 | Devon Canada Marketing Corporation. 04–12–NG | 50 Bcf | | Import natural gas from Canada, beginning on February 1, 2004, and extending through January 31, 2006. |
| 1946 | 2–18–04 | Michigan Consolidated Gas Company. 04–16–NG | | 30 Bcf | Export natural gas to Canada, beginning on May 1, 2004, and extending through April 30, 2006. |
| 1947 | 2–18–04 | BG LNG Services, LLC 04–15–NG | 1,500 Bcf | | Import liquefied natural gas from various international sources beginning on March 22, 2004, and extending through March 21, 2006. |
| 1948 | 2–23–04 | Entergy-Koch Trading Canada, ULC 04–18–NG | 100 Bcf | | Import and export a combined total of natural gas from and to Canada, beginning on February 23, 2004, and extending through February 22, 2006. |
| 1949 | 2–23–04 | Entergy-Koch Trading L.P. 04–13–NG | 800 Bcf | | Import and export a combined total of natural gas from and to Canada, beginning on May 1, 2004, and extending through April 30, 2006. |
| 1950 | 2–26–04 | Coral Canada US Inc. 04–19–NG | 350 Bcf | 350 Bcf | Import and export natural gas from and to Canada, beginning on August 1, 2003, and extending through July 31, 2005. |
| 1951 | 2–27–04 | Sequent Energy Management, L.P. 04–17–NG | 500 Bcf | | Import and export a combined total of natural gas from and to Canada and Mexico, beginning on April 1, 2004, and extending through March 31, 2006. |

[FR Doc. 04–5358 Filed 3–9–04; 8:45 am]
BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Office of Energy Efficiency and Renewable Energy

### Energy Conservation Program for Certain Industrial Equipment: Granting of the Application for Interim Waiver and Publishing of the Petition for Waiver of American Water Heater Company From the DOE Uniform Federal Test Procedure for Measuring Efficiency of Commercial Water Heaters (Case No. WH–016)

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Notice of Petition for Waiver and solicitation of comments; Grant of Interim Waiver.

**SUMMARY:** Today's notice grants an Interim Waiver to American Water Heater Company (AWH) and publishes AWH's Petition for Waiver from the existing Department of Energy (the Department or DOE) test procedure for commercial water heaters. AWH claims that it cannot demonstrate compliance with the new energy efficiency requirements for commercial water heating products that became effective October 29, 2003, for some of its water heater models, using the current test procedure. The test procedure for measuring compliance with the new standards was published as a proposed rule on August 9, 2000, and has not yet been finalized. As part of today's action, the Department is also soliciting comments, data, and information with respect to the Petition for Waiver.

**DATES:** The Department will accept comments, data, and information with respect to this Petition for Waiver on or before April 9, 2004.

**ADDRESSES:** Please submit comments, data, and information electronically if possible. Comments should be sent to the following Internet address: *commercialwaterheaterwaiver@ee.doe.gov.*

Electronic comments must be submitted in a WordPerfect, Microsoft Word, or PDF format, and avoid the use of special characters or any form of encryption. Comments in electronic format should be identified by the case number WH–016, and wherever possible carry the electronic signature of the author. Absent an electronic signature, comments submitted electronically must be followed and authenticated by submitting the signed original paper document. No telefacsimiles (faxes) will be accepted.

Written (paper) comments may be submitted to: Ms. Brenda Edwards-Jones, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, Case Number WH–016, 1000 Independence Avenue, SW, Washington, DC 20585–0121, (202) 586–2945. Please submit one signed copy, no faxes.

Copies of the public comments received will be available in the resource room of the appliance office of the Building Technologies Program, room 1J–018 of the Forrestal Building at the U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards-Jones at the above telephone number for additional information regarding visiting the resource room.

**FOR FURTHER INFORMATION CONTACT:** Mohammed Khan, U.S. Department of Energy, Building Technologies Program, Mail Stop EE–2J, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585–0121, (202) 586–7892; e-mail: *Mohammed.Khan@ee.doe.gov;* or Francine Pinto, Esq., or Thomas DePriest, Esq., U.S. Department of Energy, Office of General Counsel, Mail Stop GC–72, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0103, (202) 586–9507; e-mail: *Francine.Pinto@hq.doe.gov*, or *Thomas.DePriest@hq.doe.gov.*

**SUPPLEMENTARY INFORMATION:**

Title III of the Energy Policy and Conservation Act (EPCA) sets forth a variety of provisions concerning energy efficiency. Part B of Title III (42 U.S.C. 6291–6309) provides for the "Energy Conservation Program for Consumer Products Other than Automobiles." Part C of Title III (42 U.S.C. 6311–6317) provides for a program entitled, "Certain Industrial Equipment," which is similar to the program in Part B, and which includes commercial air conditioning equipment, packaged boilers, water heaters, and other types of commercial equipment.

Today's notice involves commercial equipment under Part C, which specifically provides for definitions, test procedures, labeling requirements, energy conservation standards, and information and reports from manufacturers. With respect to test procedures, Part C generally authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results that reflect energy efficiency, energy use and estimated annual operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6314)

For commercial water heaters, EPCA provides that DOE's test procedure shall be that generally accepted industry test procedure developed or recognized by the Air-Conditioning and Refrigeration Institute (ARI) or by the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE), as referenced in ASHRAE/Illuminating Engineers Society (IES) Standard 90.1 and in effect on June 30, 1992. (42 U.S.C. 6314(a)(4)(A)) This statute also provides that if this industry test procedure is amended, the Secretary of Energy shall amend DOE's test procedure to be consistent with the amended industry test procedure, unless the Secretary determines that such a modified test procedure does not meet the statutory criteria. (42 U.S.C. 6314(a)(4)(B))

The current DOE test procedure that is applicable to this equipment is the one referenced in the version of ASHRAE/IES 90.1 in effect in 1992, the American National Standards Institute (ANSI)/Canadian Standards Association (CSA) Standard Z21.10.3–1990. In response to ASHRAE's amendment to this standard, the Department issued a Notice of Proposed Rulemaking to adopt an updated test procedure for commercial water heaters, ANSI/CSA Standard Z21.10.3–1998, which is referenced in ASHRAE/IES Standard 90.1–1999. (65 FR 48852, August 9, 2000) The Department however, has not taken final action with respect to the proposed rule. Thus, the Standard Z21.10.3–1990 remains the applicable test procedure.

In January 2001, the Department adopted the AHSRAE 90.1–1999 energy efficiency standards for commercial gas-fired and oil-fired water heaters as new Federal efficiency standards effective October 29, 2003. (66 FR 3335, January 12, 2001) Because the Department has not yet issued a final rule on its proposal for an updated test procedure for commercial water heaters, commercial water heater manufacturers must demonstrate compliance with the new energy efficiency standards using the existing DOE test procedure.

The Department is required to make adjustments to its regulations, as necessary, to prevent special hardship, inequity or unfair distribution of burdens. (42 U.S.C. 7194) Currently, the Department has regulatory provisions in 10 CFR 430.27 and 10 CFR 431.29 allowing a waiver from test procedure requirements for covered consumer

products and electric motors. There are no specific waiver provisions for other covered commercial equipment. However, the Department proposed waiver provisions for covered commercial equipment on December 13, 1999 (64 FR 69597), as part of the commercial furnace test procedure rule, and the Department expects to publish a final rule codifying this process in 10 CFR 431.201. Until that occurs, DOE will use the waiver provisions for consumer products and electric motors for waivers involving other covered commercial equipment. These waiver provisions are substantively identical.

The waiver provisions allow the Assistant Secretary for Energy Efficiency and Renewable Energy to waive temporarily the test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics that prevent testing according to the prescribed test procedures, or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. (See 10 CFR 430.27 (a)(1), 10 CFR 431.29 (a)(1)) Waivers generally remain in effect until final test procedure amendments become effective, thereby resolving the problem that is the subject of the waiver.

DOE will grant an Interim Waiver if it determines that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. (See 10 CFR 430.27 (g)) An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

On July 29, 2003, AWH filed a Petition for Waiver and Application for Interim Waiver from the "DOE Uniform Federal Test Procedure for Measuring Efficiency of Commercial Water Heaters," referenced in the version of ASHRAE 90.1 in effect in 1992, ANSI/CSA Z21.10.3–1990. It requested permission to use ASHRAE Standard 118.1–2003 as an alternate test procedure for its water heating products having the following model numbers: G*2–75T75–4NV, CG*2–75T75–4NV, PVG*2–75T75–3NV, PVCG*2–75T75–3NV, G*2–100T77–4NV, CG*2–100T77–4NV, G*2–75T75–4PV, CG*2–75T75–4PV, PVG*2–75T75–3PV, PVCG*2–75T75–3PV, G*2–100T77–4PV, CG*2–100T77–4PV, G2*7575T4NV, CG2*7575T4NV, PVG2*7575T3NV, PVCG2*7575T3NV, G2*10077T4NV, CG2*10077T4NV, G2*7575T4PV, CG2*7575T4PV, PVG2*7575T3PV, PVCG2*7575T3PV, G2*10077T4PV, and CG2*10077T4PV wherein all above asterisks are replaced with warranty periods.

In its petition, AWH seeks a waiver from the applicable test procedure because AWH asserts that the current DOE test procedure is incompatible with the new DOE energy efficiency standards, which became effective on October 29, 2003. AWH also states that the above-specified models of water heating products do not meet the new energy efficiency requirements using the current test procedure.

Due to the fact that DOE has experienced delays in publishing a final rule for the test procedure for commercial water heating products, and also recognizes that certain basic models of commercial water heaters are allegedly not compliant with the new energy efficiency standards absent a waiver from the current DOE test procedure, the Department has decided to grant this interim waiver to ensure that such models do not become noncompliant. However, the Department believes the appropriate alternate is the test procedure published in the August 9, 2000, proposed rule, which incorporates by reference ANSI/CSA Standard Z21.10.3–1998, the applicable industry standard referenced by ASHRAE/IES Standard 90.1–1999. EPCA requires the Department, for certain commercial equipment, to amend its test procedures consistent with amended ASHRAE or ARI industry test procedures. (42 U.S.C. 6314(4)(B)) Because ASHRAE Standard 118.1–2003 is not referenced in the amended ASHRAE Standard 90.1–1999, it would be inconsistent with the statutory language of EPCA to use it as an alternate test procedure as AWH requests.

The most significant differences between the protocols presented in the proposed August 9, 2000, DOE test procedure and those presented in ASHRAE Standard 118.1–2003 are the duration requirements for the Standby Loss Test; other differences are minimal. The ANSI/CSA Standard Z21.10.3–1998 test procedure specifies that the Standby Loss Test shall continue until the first cutout occurs following 24 hours from the time data collection is initiated. Because it is possible for some water heaters to not experience the cutout until days beyond the 24 hour limit, the industry test standard, ASHRAE Standard 118.1–2003, includes a 48-hour limit to preclude undue test burdens. The inclusion of a 48-hour provision in the proposed DOE test procedure was suggested by the Gas Appliance Manufacturers Association (GAMA) and the California Energy Commission (CEC) in comments submitted in response to the August 9, 2000, proposed rule. The Department agrees with the need for the additional test duration requirement and believes that the evidence in the record is clear and convincing that without the 48-hour termination provision, the standby loss test procedure in the ANSI/CSA Standard Z21.10.3–1998 can pose undue burdens on manufacturers. Therefore, this waiver authorizes the use of ANSI/CSA Standard Z21.10.3–1998, and regarding the Standby Loss Test in section 2.10 of ANSI/CSA Standard Z21.10.3–1998, adds the requirement that the standby loss test duration shall be the shorter of either, (1) until the first cutout following 24 hours from the initiation of data collection, or (2) until 48 hours from the initiation of data collection if the water heater is not in the heating mode at that time.

After careful consideration of all the material that was submitted by AWH and others, the Department has decided to grant this interim waiver for the public policy reason that it is not desirable to make certain models of commercial water heaters noncompliant with the applicable energy efficiency standards given that the appropriate test procedure is not yet finalized. Hence, it is ordered that:

(1) The "Application for Interim Waiver" filed by AWH is hereby granted for the basic models of water heating equipment as follows: G*2–75T75–4NV, CG*2–75T75–4NV, PVG*2–75T75–3NV, PVCG*2–75T75–3NV, G*2–100T77–4NV, CG*2–100T77–4NV, G*2–75T75–4PV, CG*2–75T75–4PV, PVG*2–75T75–3PV, PVCG*2–75T75–3PV, G*2–100T77–4PV, CG*2–100T77–4PV, G2*7575T4NV, CG2*7575T4NV, PVG2*7575T3NV, PVCG2*7575T3NV, G2*10077T4NV, CG2*10077T4NV, G2*7575T4PV, CG2*7575T4PV, PVG2*7575T3PV, PVCG2*7575T3PV, G2*10077T4PV, and CG2*10077T4PV wherein all above asterisks are replaced with warranty periods.

(2) AWH is permitted the use of ANSI/CSA Standard Z21.10.3–1998 to establish compliance with the efficiency standards for its water heating products manufactured after October 29, 2003. Further, regarding the Standby Loss Test, section 2.10 of ANSI/CSA Standard Z21.10.3–1998, the use of an

additional test duration requirement is permitted as follows: The standby loss test duration shall be the shorter of either, (i) until the first cutout following 24 hours from the initiation of data collection, or (ii) until 48 hours from the initiation of data collection if the water heater is not in the heating mode at that time.

This Interim Waiver is based upon the presumed validity of statements and all allegations submitted by the company. This Interim Waiver may be removed or modified at any time upon a determination that the factual basis underlying the Application is incorrect.

This Interim Waiver shall remain in effect for a period of 180 days after issuance or until DOE acts on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180-day period, if necessary. DOE is hereby publishing the "Petition for Waiver" in its entirety. (*See* 10 CFR 430.27(b). The Petition contains no confidential information. The Department solicits comments, data, and information respecting the Petition.

Any person submitting written comments to DOE concerning either the Petition for Waiver or Interim Waiver must also send a copy of such comments to the petitioner. 10 CFR 430.27(b)(1)(iv) and 430.27(d).

Issued in Washington, DC, on March 5, 2004.

**David K. Garman,**

*Assistant Secretary, Energy Efficiency and Renewable Energy.*

BILLING CODE 6450–01–P


July 29, 2003

Mr. David Garman
Assistant Secretary, Energy Efficiency
and Renewable Energy
United States Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585

Re: Petition for Waiver and Application for Interim Waiver

Dear Sir:
American Water Heater Company respectfully submits this Petition for Waiver and Application for Interim Waiver pursuant to Title 10 CFR Part 431.29. Waiver is requested from the uniform federal test procedures for measuring efficiency of commercial water heaters referenced in 42 U.S.C. Section 6314(a)(4)(A). This petition affects the following water heater models:
**American Water Heater Company - G*2-75T75-4NV; CG*2-75T75-4NV; PVG*2-75T75-3NV; PVCG*2-75T75-3NV; G*2-100T77-4NV; CG*2-100T77-4NV; G*2-75T75-4PV; CG*2-75T75-4PV; PVG*2-75T75-3PV; PVCG*2-75T75-3PV; G*2-100T77-4PV; CG*2-100T77-4PV**
**and U.S. Craftmaster Water Heaters – G2*7575T4NV; CG2*7575T4NV; PVG2*7575T3NV; PVCG2*7575T3NV; G2*10077T4NV; CG2*10077T4NV; G2*7575T4PV; CG2*7575T4PV; PVG2*7575T3PV; PVCG2*7575T3PV; G2*10077T4PV; CG2*10077T4PV.**

**Note: Asterisk is replaced with warranty period.**

In the January 12, 2001 Federal Register, DOE published a final rule adopting ASHRAE Standard 90.1-1999 energy efficiency standards for 18 product categories of commercial; heating and air conditioning equipment as uniform national standards pursuant to the Energy Policy and Conservation Act (EPCA), as amended by the Energy Policy Act of 1992 (EPACT). These new mandatory national minimum standards are applicable to commercial water heating products manufactured after October 29, 2003 (i.e. two years after the October 29, 2001 effective date specified in ASHRAE Standard 90.1-1999).

The Notices of Proposed Rules (NOPRs) to adopt new test procedures corresponding with the new efficiency standards related to boilers and water heaters were issued August 9, 2000, but the final rules have still not been issued. This delay in implementation of the

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new test procedures forces water heater manufacturers to continue to test products to the current federal test procedures in order to meet the new federal efficiency standards.

Due to the incompatibility of the current test procedures with the new federal efficiency standards, we are unable to meet the new efficiency requirements using the current test procedure for these products. Exhibit A demonstrates the differences between the current federal test procedures, and those contained in ASHRAE 90.1-1999, and our proposed alternate test method, ASHRAE 118.1-2003. Pursuant to 42 U.S.C. Section 6314(a)(4)(B), DOE is required by law to adopt ASHRAE Standard 118.1-2003, Method of Testing for Rating Commercial Gas, Electric, and Oil Service Water Heating Equipment, as the federal test procedure for commercial water heaters unless DOE can justify by clear and convincing evidence adoption of an alternative test procedure for these products. We respectfully request that DOE allow use of ASHRAE Standard 118.1-2003 to test commercial water heaters.

Manufacturers who market similar products are being sent a copy of this petition (see Exhibit B for list of manufacturers). If any further information is required, please contact me or Jerry Miller at (423) 434-1511.

Sincerely:

Timothy J. Shellenberger
Sr. VP Product Engineering
American Water Heater Company

Attachment: Exhibit A
Exhibit B

**EXHIBIT A – Comparison of Thermal Efficiency and Standby Loss Measurements Referenced by EPACT, ASHRAE 90.1-1999, And ASHRAE 118.1-2003**

| | ANSI/CSA Z21.10.3-1990 (EPACT) | ANSI/CSA Z21.10.3-1998 (ASHRAE 90.1-1999) | ASHRAE 118.1-2003 |
|---|---|---|---|
| | | | |
| **Thermal Efficiency ($E_T$)** | | | |
| ΔT | 70 F | 70 F | 70 F |
| | | | |
| **Duration** | 30 min | 30 min | 30 min |
| | | | |
| **Standby Loss (S)** | | | |
| **Tstat (° F)** | 160 ± 5 | 140 ± 5 | 140 ± 5 |
| | | | |
| **Troom (° F)** | 75 ± 10 | 75 ± 10 | 65 - 90 |
| | | | |
| **Vary (° F)** | ± 7 | ± 7 | - |
| | | | |
| **Duration** | Not less than 48 hours If on at 48 hours finish cycle | 24 hours + next cutout | 24 hours + next cutout or 48 hours max. If on at 48 hours finish cycle |
| | | | |
| **Units** | %/hour | %/hour | %/hour |
| | | | |
| **Start** | After 1 cutout | After 2 cutouts | After 1 cutout |

EXHIBIT B – List of Manufacturers Copy of Petition Submitted To

Ms. Patricia H. Apperson
Design/Engineering
Heat Transfer Products, Inc.
120 Braley Road
P.O. Box 429
East Freetown, MA 02717-0429

Mr. William T. Harrigill
V.P. Prod. Dev. & Res. Eng.
Rheem Water Heater Division
Rheem Manufacturing Company
101 Bell Road
Montgomery, AL 36117-4305

Mr. Drew Smith
Director, Engineering
A.O. Smith Water Products Company
25731 Highway 1
McBee, SC 29101-9304

Mr. Michael W. Gordon
V.P. Engineering
Bradford White Corporation
200 Lafayette Street
Middleville, MI 49333-9492

Mr. George Kusterer
Technical Field Representative
Bock Water Heaters
220 Chestnut Street
Kutztown, PA 19530-1504

Mr. Jim Smelcer
V.P. Engineering
Lochinvar Corporation
300 Maddox Simpson Parkway
Lebanon, TN 37090-5349

Mr. John Paisley
Director of Engineering
GSW Water Heating Company
599 Hill Street West
Fergus, Ontario NIM 2Y4
Canada

[FR Doc. 04–5361 Filed 3–9–04; 8:45 am]
BILLING CODE 6450–01–C

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP04–185–000]**

### Florida Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

March 2, 2004.

Take notice that on February 27, 2004, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, effective April 1, 2004:

2nd Revised Sixty-First Revised Sheet No. 8A
2nd Revised Fifty-Third Revised Sheet No. 8A.01
2nd Revised Fifty-Third Revised Sheet No. 8A.02
Thirteenth Revised Sheet No. 8A.04
2nd Revised Fifty-Sixth Revised Sheet No. 8B
2nd Revised Forty-Ninth Revised Sheet No. 8B.01
2nd Revised Sixth Revised Sheet No. 8B.02

FGT states that the tariff sheets listed above are being filed pursuant to Section 27 of the General Terms and Conditions (GTC) of FGT's Tariff which provides for the recovery by FGT of gas used in the operation of its system and gas lost from the system or otherwise unaccounted for. FGT states that the fuel reimbursement charges pursuant to Section 27 consist of the Fuel Reimbursement Charge Percentage (FRCP), designed to recover current fuel usage on an in-kind basis, and the Unit Fuel Surcharge (UFS), designed to recover or refund previous under or overcollections on a cash basis. FGT further states that both the FRCP and the UFS are applicable to Market Area deliveries and are effective for seasonal periods, changing effective each April 1 (for the Summer Period) and each October 1 (for the Winter Period).

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or § 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

**Magalie R. Salas,**
*Secretary.*
[FR Doc. E4–504 Filed 3–9–04; 8:45 am]
BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EC04–53–001]**

### Frederickson Power L.P., Puget Sound Energy, Inc.; Notice of Filing

March 2, 2004.

Take notice that on February 27, 2004, Frederickson Power L.P. (Frederickson) and Puget Sound Energy, Inc. (PSE) (collectively, Applicants) filed with the Federal Energy Regulatory Commission their response to the February 12, 2004, request for more information by the Director of the Division of Tariffs and Market Development—West regarding the Applicants' January 14, 2004, Section 203 Application seeking authorization of a disposition of jurisdiction facilities. The disposition for which authorization is sought is the transfer by Frederickson through sale, and the acquisition by PSE through purchase, of a 49.85% undivided ownership interest in the approximately 249 MW nominal generating capacity Frederickson 1 generating facility located near Frederickson, Pierce County, Washington.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

*Comment Date:* March 15, 2004.

**Magalie R. Salas,**
*Secretary.*
[FR Doc. E4–506 Filed 3–9–04; 8:45 am]
BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP97–255–062]**

### TransColorado Gas Transmission Company; Notice of Compliance Filing

March 2, 2004.

Take notice that on February 27, 2004, TransColorado Gas Transmission Company (TransColorado) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Sixth Revised Sheet No. 21, Third Revised Sheet No. 22 and Original Sheet No. 22.01, to be effective March 1, 2004.

TransColorado states that the filing is being made in compliance with the Commission's Letter Order issued March 20, 1997, in Docket No. RP97–255–000. The tendered tariff sheets propose to revise TransColorado's Tariff to reflect an amended negotiated-rate contract.

TransColorado states that a copy of this filing has been served upon all parties to this proceeding, TransColorado's customers, the Colorado Public Utilities Commission and the New Mexico Public Utilities Commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC

20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E4–505 Filed 3–9–04; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[OPA–2004–0001, FRL–7633–8]**

### Agency Information Collection Activities: Proposed Collection; Comment Request; Renewal of Information Collection Request for the Implementation of the Oil Pollution Act Facility Response Plan Requirements (40 CFR Part 112); EPA ICR Number 1630.08; OMB Control Number 2050–0135

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request to renew an existing approved collection. This ICR is scheduled to expire on May 31, 2004. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

**DATES:** Comments must be submitted on or before May 10, 2004.

**ADDRESSES:** Submit your comments, referencing docket ID number OPA–2004–0001, to EPA online using EDOCKET (our preferred method), by e-mail to *superfund.docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, OSWER Docket, Mail Code 5202T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Leigh DeHaven, Office of Solid Waste and Emergency Response—OEPPR, Mail Code 5203G, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 603–9065; fax number: (703) 603–9116; e-mail address: *dehaven.leigh@epa.gov*.

**SUPPLEMENTARY INFORMATION:** EPA has established a public docket for this ICR under Docket ID number OPA–2004–0001, which is available for public viewing at the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the OSWER Docket is (202) 566–0276. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET.

*Affected entities:* The owner or operator of a facility that is required to have a spill prevention control and countermeasure (SPCC) plan under the Oil Pollution Prevention regulation (40 CFR part 112) and that could cause "substantial harm" to the environment must prepare and submit to EPA a facility response plan (FRP). The criteria for a "substantial harm" facility include oil transfers over water and a total storage capacity over 42,000 gallons; or total oil storage capacity over one million gallons and insufficient secondary containment, proximity to sensitive environments, proximity to drinking water supplies, or recent large spills; or other factors considered by the Regional Administrator. (*See* 40 CFR 112.20(b)(1) and (f) for further information about the criteria for "substantial harm.")

The specific private industry sectors subject to this action include, but are not limited to: (1) Petroleum Bulk Stations and Terminals (NAICS 42271); (2) Electric Power Generation, Transmission, and Distribution (NAICS 2211); (3) Gasoline Stations/Automotive Rental and Leasing (NAICS 4471/5321); (4) Heating Oil Dealers (NAICS 3112); (5) Transportation, Pipelines, and Marinas (NAICS 482–486/488112–48819/4883/48849/492/71393); (6) Grain and Oilseed Milling (NAICS 3112); (7) Manufacturing (NAICS 31–33); (8) Warehousing and Storage (NAICS 493); (9) Crude Petroleum and Natural Gas Extraction (211111); (10) Mining and Heavy Construction (NAICS 2121/2123/213114/213116/234); (11) Schools (NAICS 6111–6113; (12) Hospitals (622–623); (13) Crop and Animal Production (NAICS 111–112); and (14) Other Commercial Facilities (miscellaneous).

*Title:* Renewal of Information Collection Request for the Implementation of the Oil Pollution Act Facility Response Plan Requirements (40 CFR part 112).

*Abstract:* The authority for EPA's facility response plan requirements is derived from section 311 of the Clean Water Act, as amended by the Oil Pollution Act of 1990. EPA's regulation is codified at 40 CFR 112.20 and 112.21. This information collection request renewal reflects impacts associated with a program change to the SPCC regulations since the last ICR approval (May 2, 2001). EPA issued the final SPCC regulations on July 17, 2002. Pursuant to 40 CFR 112.1(d)(6), EPA will no longer regulate wastewater treatment facilities or parts thereof (except at oil production, oil recovery,

and oil recycling facilities) used exclusively for wastewater treatment and not used to meet any other requirement of 40 CFR part 112. All facility response plan (FRP) reporting and recordkeeping activities are mandatory.

**Purpose of Data Collection**

A facility-specific response plan will help an owner or operator identify the necessary resources to respond to an oil spill in a timely manner. If implemented effectively, the FRP will reduce the impact and severity of oil spills and may prevent spills because of the identification of risks at the facility. Although the owner or operator is the primary data user, EPA also uses the data in certain situations to ensure that facilities comply with the regulation and to help allocate response resources. State and local governments may use the data, which are not generally available elsewhere and can greatly assist local emergency preparedness planning efforts.

EPA reviews all submitted FRPs and must approve FRPs for those facilities whose discharges may cause "significant and substantial harm" to the environment in order to ensure that facilities believed to pose the highest risk have planned for adequate resources and procedures to respond to a spill. (*See* 40 CFR 112.20(f)(3) for further information about the criteria for "significant and substantial harm.")

**Response Plan Certification**

Under section 112.20(e), the owner or operator of a facility that does not meet the "substantial harm" criteria in section 112.20(f)(1) must complete and maintain at the facility the certification form contained in Appendix C to part 112.

**Response Plan Development**

Under section 112.20(a) or (b), the owner or operator of a facility that meets the "substantial harm" criteria in section 112.20(f)(1) must prepare and submit to the EPA Regional Administrator a facility response plan (FRP) following section 112.20(h). Such a facility may be a newly constructed facility or may be an existing facility that meets paragraph (f)(1) as a result of a planned change (paragraph (a)(2)(iii)) or an unplanned change (paragraph (a)(2)(iv)) in facility characteristics. Under paragraph (c), the owner or operator may be required to amend the FRP.

**Response Plan Maintenance**

Under section 112.20(g), the owner or operator must periodically review the FRP to ensure consistency with the National Oil and Hazardous Substances Pollution Contingency Plan and Area Contingency Plans. Under section 112.20(d), the facility owner or operator must revise and resubmit revised portions of the FRP after material changes at the facility. FRP changes that do not result in a material change in response capabilities shall be provided to the Regional Administrator as they occur. Periodic drills and exercises are required to test the effectiveness of the FRP.

**Recordkeeping**

Under section 112.20(e), an owner or operator who determines that the requirements do not apply must certify and retain a record of this determination. An owner or operator who is subject to the requirements must keep the FRP at the facility (section 112.20(a)), keep updates to the FRP (section 112.20(d)(1) and (2)), and log activities such as discharge prevention meetings, response training, and drills and exercises (section 112.20(h)(8)(iv)).

**Consultations**

For the current ICR (approved on May 2, 2001), EPA relied on existing industry-related sources of burden and cost information, combined with input from EPA regional staff and best professional judgment, to estimate FRP ICR burden and unit costs. In addition, EPA undertook the collection of FRP information by contacting several regulated facilities and trade organizations representing these facilities to gather FRP ICR burden information. However, none of the facility owners and operators were willing to disclose any data, due to privacy concerns or lack of information.

The terms of clearance for the current ICR (approved on May 2, 2001) states that "[w]hen EPA resubmits the ICR for renewal, the Agency must evaluate, after consulting with respondents, the burden estimates for reporting and recordkeeping requirements." For this renewal ICR, EPA consulted with nine owners or operators of FRP facilities (of different sizes and types) to assess the reasonableness of the hour and dollar burden estimates. The interviews revealed that the burden estimates presented in the May 2001 renewal ICR and the burden estimates collected during the nine facility consultations were comparable; all were within the same order of magnitude. Further, the consultations did not reveal any information regarding significant sources of burden not captured in the May 2001 renewal ICR (such as unaccounted for recordkeeping costs or other time-consuming tasks associated with FRP regulatory compliance). EPA recognizes that the information from the interviews with nine individuals are not statistically representative of the burden experienced by all FRP facilities. Nevertheless, the results of the consultations suggest that EPA's burden estimates adequately capture industry practices. This renewal ICR, therefore, does not change the hour or capital cost burden estimates used in the May 2001 renewal ICR.

None of the information to be gathered for this collection is believed to be confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

*Burden Statement:* Of the estimated 432,034 existing SPCC facilities in 2004, EPA assumes that representatives from approximately 6,158 facilities have developed and are maintaining FRPs. EPA also estimates that the annual number of new FRP facilities is approximately 66, or 1.5 percent of the number of new facilities subject to 40 CFR part 112 each year (4,420). Accordingly, EPA assumes that representatives from approximately 4,354 facilities (98.5 percent of facilities subject to 40 CFR part 112) will complete the certification from indicating that they are not "substantial harm" facilities.

The hour burden and dollar cost estimates capture the variety of facility types and sizes among those that are subject to the FRP requirements. Because the costs of compliance

activities associated with FRPs depend largely on the physical and operating characteristics of the facility, three facility size categories were defined as: Small facilities with a total storage capacity greater than 1,320 gallons, but less than or equal to 42,000 gallons; Medium facilities with a total storage capacity greater than 42,000 gallons but less than or equal to one million gallons; and Large facilities with a total storage capacity greater than one million gallons. Because FRP regulations apply to facilities with an oil storage capacity of over one million gallons, or over 42,000 gallons if the facility transfers oil over water or to and from vessels, the "small" facilities were excluded from the burden estimates. The FRP facility type categories were based on how oil is used at a facility. Facilities were classified as using oil in one of three ways: Storage/Consumption facilities that consume oil as a raw material or end-use product; Storage/Distribution facilities market and distribute oil as a wholesale or retail product; and Production facilities pump oil from the ground as part of exploration or production activities.

The total hour burden to the entire regulated community over the three-year period covered by the renewal ICR is approximately 1,904,980 hours, or 634,994 hours annually. Exhibit 1 displays the recordkeeping and reporting burden for affected facilities. The public reporting and recordkeeping burdens to newly regulated facilities where the owners or operators are not required to prepare FRPs (*i.e.*, facilities where the owner or operators certify that they do not meet the "substantial harm" criteria) are 0.1 hours for recordkeeping and 0.4 hours for reporting per year. The annual reporting and recordkeeping burdens to newly regulated facilities where the owners or operators are required to prepare FRPs (*i.e.*, first-year costs for plan development) are 8.3 hours and 237 hours, respectively. The average annual reporting and recordkeeping burdens to facilities where the owners or operators maintain FRPs (*i.e.*, subsequent year costs for annual plan maintenance) are 1.2 hours and 98 hours, respectively.

EXHIBIT 1.—FRP RECORDKEEPING AND REPORTING BURDEN FOR AFFECTED FACILITIES

| | Total average annual burden (hours) | Number of facilities per year (respondents) | Average annual burden per respondent (hours) |
|---|---|---|---|
| **FRP Certification** | | | |
| Recordkeeping | 435 | 4,354 | 0.1 |
| Reporting | 1,813 | 4,354 | 0.4 |
| **FRP Preparation** | | | |
| Recordkeeping | 548 | 66 | 8.3 |
| Reporting | 15,658 | 66 | 237.0 |
| **FRP Maintenance** | | | |
| Recordkeeping | 7,469 | 6,224 | 1.2 |
| Reporting | 609,070 | 6,224 | 98.0 |

Capital costs are incurred by respondents that must prepare an FRP for the first time. The total capital cost to comply with the FRP information collection requirements is $62,147 over the three-year period covered by the renewal ICR, or $20,716 per year. This includes one-time start-up costs such as telephone calls, postage, photocopying, and other costs related to the preparation and submission of an FRP. O&M costs are considered to be negligible since it is expected that facility owners and operators will incur no additional costs due to hard copy storage of their FRPs (*e.g.*, placed on existing shelves or in existing file cabinets) or electronic storage (*e.g.*, saved on a facility's existing computer hard drive or network).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: February 26, 2004.

**Deborah Y. Dietrich,**

*Director, Office of Emergency Prevention, Preparedness & Emergency Response.*

[FR Doc. 04–5369 Filed 3–9–04; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7633–7]**

## 2004 RCRA National Corrective Action Conference

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of public invitation to the 2004 RCRA National Corrective Action Conference.

**SUMMARY:** Notice is hereby given of public invitation to the sessions of the forthcoming Resource Conservation and Recovery Act (RCRA) Corrective Action (CA) Conference "Moving Towards Results Based—Facility Initiated Corrective Action." This CA Conference brings together RCRA program representatives from the Environmental Protection Agency (EPA), States, Community leaders, as well as Industry representatives. This conference will explore Future Measures for Environmental Indicators for 2008 and

2020, and fostering innovations that will drive the RCRA CA Program, to name a few topics. The RCRA CA Conference continues to be a great opportunity to have a frank discussion on CA issues and to exchange information and experiences on streamlining the CA process.

**DATES:** The 2004 RCRA National Corrective Action Conference starts at 8 a.m. on Tuesday, May 11, 2004 and is projected to end at 12 p.m. on Wednesday, May 12, 2004.

**FOR FURTHER INFORMATION CONTACT:** Lael Butler, (404–562–8453), U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Code 4WD–RPB, Atlanta, GA 30303–8960.

**SUPPLEMENTARY INFORMATION:** Early registration is required and recommended for this Conference. To reduce costs and minimize paper, we encourage everyone to register electronically at the conference web site: *Http://www.nationalcaconf.com/2004*. If electronic registration is not possible, please contact Jasmine Schliesmann-Merkle, Regional Manager, TechLaw, Inc., 310 Maxwell Road, Suite 500, Alpharetta, GA 30004. Her telephone number is (770) 752–7585, ext. 105. Information on the location of the Conference, as well as the proposed agenda will be available at the Web site.

Dated: February 24, 2004.

**Winston Smith,**

*Director, Waste Management Division.*

[FR Doc. 04–5372 Filed 3–9–04; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[OPPT–2004–0078; FRL–7348–6]**

## Forum on State and Tribal Toxics Action; Notice of Public Meeting

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

**ACTION:** Notice.

**SUMMARY:** EPA is announcing the meeting of the Forum on State and Tribal Toxics Action (FOSTTA) to collaborate on environmental protection and toxic chemical issues. FOSTTA is comprised of the Chemical Information and Management Project, the Pollution Prevention Project, and the Tribal Affairs Project. FOSTTA will be meeting March 22–23, 2004. The meeting is being held to provide the participants of the three projects an opportunity to have in-depth discussions on issues concerning the environment and human health, which are affecting the States and Indian country. This notice announces the location and times for the meeting and sets forth some tentative agenda topics. EPA invites all interested parties to attend the public meeting.

**DATES:** The three projects will meet on Monday, March 22, 2004, from 10 a.m. to 5 p.m., and Tuesday, March 23, 2004, from 8 a.m. to noon. A plenary session is being planned for the participants on Monday, March 22, 2004, from 8 a.m. to 9:30 a.m.

Requests to participate in the meeting, identified by docket identification (ID) number OPPT–2004–0078, must be received on or before March 18, 2004.

**ADDRESSES:** The meeting will be held at the Four Points Sheraton Hotel, 1201 K Street, NW., Washington, DC.

Requests to participate in the meeting may be submitted to the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

**FOR FURTHER INFORMATION CONTACT:** *For general information contact:* Barbara Cunningham, Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov.*

*For technical information contact:* Darlene Harrod, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8814; fax number: (202) 564–8813; e-mail address: *harrod.darlene@epa.gov.*

Christine Eppstein, Environmental Council of the States, 444 North Capitol Street, NW., Suite 445, Washington, DC 20001; telephone number: (202) 624–3661; fax number: (202) 624–3666; e-mail address: *ceppstein@sso.org.*

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are interested in FOSTTA and hearing more about the perspectives of the States and Tribes on EPA programs and information exchange regarding important issues related to human health and environmental exposure to toxic chemicals. Potentially affected entities may include, but are not limited to:

- States and federally recognized Tribes.
- Federal, State, and local environmental and public health organizations.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

*B. How Can I Get Copies of this Document and Other Related Information?*

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPPT–2004–0078. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at EPA's Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. EPA's Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding holidays. EPA's Docket Center Reading Room telephone number is (202) 566–1744, and the telephone number for the OPPT Docket, which is located in EPA's Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

### II. Background

The Toxic Substances Control Act, 15 U.S.C. 2609 section 10(g), authorizes EPA and other Federal agencies to

establish and coordinate a system for exchange among Federal, State, and local authorities of research and development results respecting toxic chemical substances and mixtures, including a system to facilitate and promote the development of standard data format and analysis and consistent testing procedures. Through FOSTTA, the Chemical Information and Management Project (CIMP) focuses on EPA's chemical program and works to develop a more coordinated effort involving Federal, State, and Tribal agencies. The Pollution Prevention Project (P2) promotes the prevention ethic across society, helping companies incorporate P2 approaches and techniques and integrating P2 into mainstream environmental activities at both the Federal level and among the States and Tribes. The Tribal Affairs Project (TAP) concentrates on chemical and prevention issues that are most relevant to the Tribes, including lead control and abatement, Tribal traditional/subsistence lifeways, and hazard communications and outreach. FOSTTA's vision is to focus on major policy-level issues of importance to States and Tribes, recruit more senior State and Tribal leaders, increase outreach to all 50 States and some 560 federally recognized Tribes, and vigorously seek ways to engage the States and Tribes in ongoing substantive discussions on complex and oftentimes controversial environmental issues.

In January 2002, the Environmental Council of the States (ECOS), in cooperation with the National Tribal Environmental Council (NTEC), was awarded the new FOSTTA cooperative agreement. ECOS, NTEC, and EPA's Office of Pollution Prevention and Toxics (OPPT) are co-sponsoring the meeting. As part of a cooperative agreement, ECOS facilitates ongoing efforts of the State and Tribal leaders and OPPT to increase understanding and improve collaboration on toxic chemicals and pollution prevention issues, and to continue a dialogue on how Federal environmental programs can best be implemented among the States, Tribes, and EPA.

## III. How Can I Request to Participate in this Meeting?

You may submit a request to participate in this meeting to the technical person listed under **FOR FURTHER INFORMATION CONTACT**. Do not submit any information in your request that is considered Confidential Business Information. Requests to participate in the meeting, identified by docket ID number OPPT–2004–078, must be received on or before March 18, 2004.

## IV. The Meeting

In the interest of time and efficiency, the meetings are structured to provide maximum opportunity for State, Tribal, and EPA participants to discuss items on the predetermined agenda. At the discretion of the chair, an effort will be made to accommodate participation by observers attending the proceedings. The FOSTTA representatives and EPA will collaborate on environmental protection and pollution prevention issues. The tentative agenda items identified by the States and the Tribes follow:

1. Federal budget process (TAP).
2. Pollution prevention activities (TAP).
3. Discussion on HPV challenge data base and demonstration (CIMP).
4. Joint session with TAP/CIMP to increase State and Tribal involvement (CIMP).
5. Connecting P2 with measurable results (P2).
6. P2 in schools (P2).

## List of Subjects

Environmental protection, Pollution prevention, Chemical information and management.

Dated: March 3, 2004.

**Barbara A. Cunningham,**

*Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics.*

[FR Doc. 04–5373 Filed 3–9–04; 8:45 am]

**BILLING CODE 6560–50–S**

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## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–2003–0414; FRL–7340–7]**

## Propamocarb Hydrochloride; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

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

**ACTION:** Notice.

**SUMMARY:** This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

**DATES:** Comments, identified by docket identification (ID) number OPP–2003–0414, must be received on or before April 9, 2004.

**ADDRESSES:** Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:** Mary Waller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9354; e-mail address: *waller.mary@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

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

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

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

### *B. How Can I Get Copies of this Document and Other Related Information?*

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2003–0414. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet

under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in EPA's Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

### *C. How and to Whom Do I Submit Comments?*

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2003–0414. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2003–0414. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0414.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0414. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

### *D. How Should I Submit CBI to the Agency?*

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of

the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

*E. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

**II. What Action is the Agency Taking?**

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

**List of Subjects**

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 27, 2004.

**Lois Rossi,**

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

**Summary of Petition**

The petitioner's summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

**Bayer CropScience**

*PP 0F6123*

EPA has received a pesticide petition (0F6123) from Bayer CropScience, 2TW Alexander Drive, Research Triangle Park, NC 27709, proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR 180.499 by establishing a tolerance for residues of propyl [3-(dimethylamino)propyl]carbamate mono-hydrochloride, also known as propamocarb hydrochloride, in or on the raw agricultural commodities (RACs) lettuce, leaf, at 65 parts per million (ppm), lettuce, head, at 50 ppm, wheat, grain, at 0.05 ppm, wheat, straw, at 0.10 ppm, wheat, forage, at 0.30 ppm, wheat, hay, at 0.30 ppm, vegetable, cucurbit, group 9, at 1.5 ppm, vegetable, fruiting, group 8, at 2.0 ppm, and tomato, paste, at 5.0 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

*A. Residue Chemistry*

1. *Plant metabolism.* The fate of propamocarb hydrochloride in plants is clearly understood. Metabolism studies in cucumbers, potatoes, and spinach demonstrated that propamocarb hydrochloride is degraded into carbon dioxide, which is reincorporated into natural plant constituents. The primary residue found in all crops, and the only residue of concern, is the parent, propamocarb hydrochloride.

2. *Analytical method.* A practical analytical method utilizing gas/liquid chromatography (GLC) and flame ionization detector *N*-(FID) or mass spectrometry detection (MSD) is available and has been validated for detecting and measuring levels of propamocarb hydrochloride in or on food. The limit of quantification (LOQ) is 0.05 milligrams/kilogram (mg/kg) (ppm).

3. *Magnitude of residues.* Residue trials have been conducted with representative applications of propamocarb hydrochloride formulations to lettuce, cucurbits, tomatoes, and peppers. In all cases, the proposed tolerances are based upon the highest residues seen at the maximum rate, minimum application interval, and minimum pre-harvest interval utilized in the studies.

For lettuce, leaf, a proposed pre-harvest interval of 2 days and tolerance of 65 ppm is proposed. For lettuce, head, a pre-harvest interval of 2 days and tolerance of 50 ppm is proposed. For vegetables, cucurbits, a proposed pre-harvest interval of 2 days and tolerance of 1.5 ppm is proposed. For vegetables, fruiting, a pre-harvest interval of 5 days and tolerance of 2.0 ppm is proposed. Based on a tomato processing study, a tolerance of 5.0 ppm is proposed for tomato paste. No tolerance is proposed for tomato, puree, because the residue in this commodity is anticipated to be less than or equal to the proposed crop group tolerance.

In the field rotational crop study, residues were present only in wheat rotated 30 days after the last propamocarb hydrochloride treatment. There were no residues in sugar or table beets, soybeans, or dried beans. Based upon the results of this study, and in conjunction with recent section 18 emergency exemptions, EPA proposed time-limited tolerances for wheat grain at 0.05 ppm (the LOQ of the analytical method), wheat straw at 0.1 ppm, and wheat forage and hay at 0.3 ppm.

*B. Toxicological Profile*

Much of the toxicological database supporting the registration of propamocarb hydrochloride has been evaluated by EPA as part of previous regulatory actions and is summarized below. The conclusions presented are those determined by the Agency as reported by the registrant. Additional studies have been submitted to the Agency and are awaiting review. Those studies' results are summarized below by the registrant.

1. *Acute toxicity.* There are no acute toxicity concerns with propamocarb hydrochloride. The acute rat oral lethal dose $(LD)_{50}$ was 2,900 mg/kg in males and 2,000 mg/kg in females. The acute rat dermal $(LD)_{50}$ was >3,000 mg/kg. The acute (4–hour) inhalation lethal

concentration $(LC)_{50}$ in rats was >5.54 milligrams/Liter (mg/L). Propamocarb hydrochloride was a slight skin sensitizer in guinea pigs. Propamocarb hydrochloride was previously classified as toxicity category III for acute oral and dermal toxicity and eye irritation, and category IV for acute inhalation toxicity and skin irritation.

An acute neurotoxicity study was performed in rats at dose levels of 0, 20, 200, and 2,000 mg/kg of propamocarb hydrochloride. The overall no observed adverse effect level (NOAEL) for this study was determined to be 200 mg/kg based on decreased weight gain, soiled fur and decreased motor activity in males and/or females at 2,000 mg/kg.

2. *Genotoxicity.* No evidence of genotoxicity was observed in a battery of studies including *Salmonella* and *E. coli* gene mutation assays, two mouse micronucleus assays, an *in vitro* mammalian cytogenetic assay using cultured human lymphocytes, a yeast mitotic gene conversion assay and a yeast mitotic recombination assay.

3. *Reproductive and developmental toxicity.* In a developmental toxicity study, rats were administered propamocarb hydrochloride by gavage at dose levels of 0, 74, 221, 740, or 2,210 mg/kg/day on gestation days 6–19. The NOAEL for maternal toxicity was 740 mg/kg/day based on mortality, clinical observations and decreased body weight gain at 221 mg/kg/day. The NOAEL for developmental toxicity was 221 mg/kg/day based on increased post-implantation loss, decreased fetal weights and increased incidence of minor skeletal anomalies (retarded ossification) at 740 and/or 2,210 mg/kg/day.

In another developmental toxicity study, rabbits were administered propamocarb hydrochloride by gavage at dose levels of 0, 15, 45, 150, 300, or 600 mg/kg/day on gestation days 6–18. The NOAEL for both maternal toxicity and developmental toxicity was 150 mg/kg/day, based on decreased maternal body weight gain and increased post-implantation loss at 300 mg/kg/day.

A 3–generation reproduction study was conducted using rats fed diets containing propamocarb hydrochloride at dietary concentrations of 0, 40, 200, and 1,000 ppm (33.3 mg/kg/day) for 100 days and then continuously through three successive generations. No treatment-related effects were noted on either the parents or offspring.

A 2–generation reproduction study was conducted with albino rats. Animals received propamocarb hydrochloride at dietary concentrations of 0, 200, 1,250 and 8,000 ppm. Reduced body weights were observed in the F0 and F1 parental animals and the F1 and F2 offspring at 8,000 ppm. Based on these findings, the NOAEL is 1,250 ppm for parental and neonatal toxicity (81 mg/kg/day for males and 127 mg/kg/day for females) and 8,000 ppm for reproductive toxicity.

4. *Subchronic toxicity.* In a 90–day feeding study, propamocarb hydrochloride was administered to albino rats at concentrations of 0, 20, 50, 100, and 500/1,000 ppm. (The high dose rate was 500 ppm when the study was begun, but was raised to 1,000 ppm during the course of the study) in the diet. The only effects noted were slightly reduced food efficiency and body weight gains at 1,000 ppm.

In a 90–day feeding study in Beagle dogs, propamocarb hydrochloride was administered in the diet at concentrations of 0, 50, 100, 500, and 1,000/2,000 ppm. (The high dose rate was 1,000 ppm when the study was begun, but was raised to 2,000 ppm during the course of the study). No treatment-related findings were observed.

In a 90–day feeding study with albino mice, propamocarb hydrochloride was administered at concentrations of 0, 1,404, 2,808, 5,616 and 11,232 ppm in the diet. No treatment-related findings were observed.

A 21–day dermal toxicity study was performed with propamocarb hydrochloride in Sprague-Dawley rats at dose levels of 0, 100, 500, and 1,000 mg/kg/day, 6 hours per day, 5 days per week over a 21–day period. No treatment related effects were observed.

A 21–day dermal toxicity study was performed with propamocarb hydrochloride in rabbits at dose levels of 0, 150, 525, and 1,500 mg/kg/day, 6 hours per day, 5 days per week, over a 21–day period. The NOAEL for this study was considered by the Agency to be 150 mg/kg/day based on dose-related skin irritation in mid-dose and high-dose animals and a decrease in weight gain in mid-dose females.

A 90–day neurotoxicity study was conducted in rats at dietary concentrations of propamocarb hydrochloride of 0, 200, 2,000, and 20,000 ppm. No evidence of neurotoxicity (Functional Obervation Battery (FOB), motor activity or neuropathology) was observed at any dose level. Plasma, red blood cell (RBC) and brain cholinesterase levels were also not affected. The NOAEL was determined to be 2,000 ppm (142 mg/kg/day) based on decreased weight gain at 20,000 ppm.

5. *Chronic toxicity.* A 2–year feeding chronic toxicity/carcinogenicity study was performed in Sprague-Dawley rats with propamocarb hydrochloride at dietary concentrations of 0, 40, 200, or 1,000 ppm. There was no evidence of carcinogenicity or other treatment-related effects except for a possible reduction in food intake in female rats at the highest level tested. Thus, 1,000 ppm (41 mg/kg/day) was considered to be the NOAEL. However, this study did not satisfy the EPA's criteria for a maximum tolerated dose (MTD). In a second 2–year chronic toxicity/oncogenicity study, albino rats received diets containing propamocarb hydrochloride at concentrations of 0, 350, 2,800, and 22,400 ppm. Animals receiving 22,400 ppm exhibited decreased body weights, body weight gain and food consumption. Additionally, these animals revealed moderate vacuolation of the choroid plexus ependymal cells. There was no evidence of oncogenicity. Based on these findings, the NOAEL is 2,800 ppm (138 mg/kg/day).

A 2–year feeding chronic toxicity/carcinogenicity study was performed in CD–1 mice with propamocarb hydrochloride at dietary concentrations of 0, 20, 100, and 500 ppm. No evidence of carcinogenicity or toxicity was noted at any dose level. Thus, 1,000 ppm (53 mg/kg/day for males and females, respectively), was considered to be the NOAEL.

An 18–month mouse oncogenicity study was conducted in CD–1 mice exposed to propamocarb hydrochloride at dietary concentrations of 0, 105, 840, and 6,720 ppm. Reduced body weights were reported for animals in the 840 and 6,720 ppm groups. There was no evidence of oncogenicity. Based on these findings, the NOAEL is 105 ppm (16 mg/kg/day).

A 2–year feeding study was performed in Beagle dogs with propamocarb hydrochloride at dietary concentrations of 0, 1,000, 3,000, and 10,000 ppm. Decreased weight gain, decreased food efficiency, an increased incidence of acute gastric mucosal erosions, and/or chronic erosive gastritis were noted in all treated groups. Thus, a NOAEL for this study was not determined but was considered to be slightly lower than the lowest dose level tested (33.3 mg/kg/day, 1,000 ppm).

6. *Animal metabolism.* The absorption, distribution, metabolism, and excretion of propamocarb hydrochloride has been evaluated in rats. Propamocarb hydrochloride was rapidly absorbed, extensively metabolized, and rapidly eliminated, primarily via the urine (>90% excreted within 24 hours), following oral administration. Metabolite profiles were similar following single and repeated

oral dosing and following intravenous dosing. The primary route of metabolism was oxidative degradation with hydrolytic cleavage occurring as a secondary pathway.

The metabolism of propamocarb hydrochloride has been evaluated in ruminants. The majority of the orally administered dose was excreted via the urine and feces. Total radioactive residues in tissues and bile accounted for 0.7% of the administered dose. The majority of the residue was comprised of propamocarb hydrochloride plus *N*-oxide metabolite, an oxazolidine metabolite, and a 2–hydroxy metabolite.

7. *Endocrine disruption.* No special studies have been conducted to investigate the potential of propamocarb hydrochloride to induce estrogenic or other endocrine effects. However, the standard battery of required toxicity studies has been completed. These studies include an evaluation of the potential effects on reproduction and development, and an evaluation of the pathology of the endocrine organs following repeated or long-term exposure. These studies are generally considered to be sufficient to detect any endocrine effects yet no such effects were detected. Thus, the potential for propamocarb hydrochloride to produce any significant endocrine effects is considered to be minimal.

*C. Aggregate Exposure*

An aggregate exposure assessment was conducted in order to determine the total exposure for someone who would be exposed to propamocarb hydrochloride residues from both dietary and non-dietary routes. The only population subgroup of concern for residential use is females 13+, thus an aggregate assessment was conducted for this subgroup only. For the purpose of this petition only, a worst-case scenario was assumed wherein a female 13+ is exposed to an acute dietary dose (95$^{th}$ percentile of Tier I analysis) and enters a treated residential lawn on the same day (exposure assumptions described below). In practice, the aggregate assessment should not assume that "worst-case" exposures would occur simultaneously. Rather, the aggregate assessment should evaluate a realistic scenario incorporating the relative application times and use patterns (calendar-based model) along with a chronic dietary background exposure. This calendar-based model has not been used for this assessment. The aggregate methodology used here entails summation of all route-specific exposures assuming that they occur simultaneously. The dermal non-dietary exposure has been converted to oral equivalents using a dermal absorption factor. Thus the maximum aggregate exposure for a female 13+ to potential residues of propamocarb hydrochloride from food and non-dietary routes is at 11% (0.168 milligrams/kilogram of bodyweight per day (mg/kg bwt/day)) of the short-term reference dose (RfD) margin of exposure ((MOE)=891). Intermediate-term exposures would be even less. The drinking water level of comparison (DWLOC) based on this exposure value for females 13+ is 39,900 parts per billion (ppb) (39.9 ppb), still several orders of magnitude higher than the acute and chronic drinking water estimated concentrations (DWECs) described below.

1. *Dietary exposure.* Dietary exposure to propamocarb hydrochloride was estimated from residues expected on food and in drinking water.

i. *Food.* Potential dietary exposures from food were estimated using the dietary exposure evaluation model (DEEM) software system (Novigen Sciences, Inc.) and the 1994–1996 United States Department of Agriculture (USDA) consumption data. For the purposes of this assessment, Bayer CropScience has made the very conservative assumption that 100% of all commodities will contain propamocarb hydrochloride residues at the proposed and established tolerance levels. EPA has established a tolerance for propamocarb hydrochloride on potatoes of 0.06 ppm [65 FR 58399]. In the current petition the following tolerances are proposed: 2.0 ppm in fruiting vegetables and their respective processed commodities, except for 5.0 ppm in tomato paste; 1.5 ppm in cucurbits; 50 ppm in head lettuce; 65 ppm in leaf lettuce; 0.05 ppm in wheat grain; 0.1 ppm in wheat straw; and 0.3 ppm in wheat forage and hay. Results of the Tier I acute analysis for females 13+ show that 7% (0.0984 mg/kg body weight/day (bwt/day) of the acute RfD is utilized at the 95$^{th}$ percentile. This is a very conservative estimate and actual exposure is likely to be much less or negligible in real world situations. The Tier I chronic analysis results in 18% (0.0201 mg/kg bwt/day of the chronic RfD utilized for the U.S. population. The most highly exposed population subgroup is children 1 to 6 at 24% of the chronic RfD (0.0268 mg/kg bwt/day) consumed. As in the acute scenario these are very conservative estimates and actual exposures are likely to be much less as new data and models are developed.

ii. *Drinking water.* EPA's standard operating procedure (SOP) for drinking water exposure and risk assessments was used to perform the drinking water assessment. This SOP uses a variety of tools to conduct drinking water assessments. These tools include water models such as screening concentration in ground water (SCI-GROW), generic expected environmental concentration (GENEEC), EPA's Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZMS/EXAMS), and monitoring data. If monitoring data is not available then the models are used to predict potential residues in surface water and ground water. In the case of propamocarb hydrochloride, monitoring data do not exist therefore SCI-GROW and PRZM/EXAMS were used to estimate water residues. The calculated drinking water level of comparison (DWLOC) for chronic and acute exposures for all adults and children exceed the DWEC from the models. The acute DWLOC for females 13+ (the only population of concern for acute exposure) is 42,000 ppb (42 ppb). The acute DWEC is 132 ppb for surface water. The chronic DWLOC for adults is 3,147 ppb. The chronic DWLOC for children/toddlers is 833 ppb. The surface water DWEC for the worst-case chronic scenario is 20 ppb.

2. *Non-dietary exposure.* Based on the labeled use patterns, a chronic exposure scenario does not exist. The endpoint of concern is short-term and intermediate-term dermal exposure to females 13+ only (based on post-implantation loss in the rabbit developmental toxicity study). The estimated dermal exposures are converted to oral equivalents using a dermal absorption factor. As a professional use turf and ornamental fungicide, propamocarb hydrochloride is used primarily (>90% of use) on golf courses for control of *Pythium* blight (BANOL Fungicide, EPA Reg. No. 45639–88). Some limited use of BANOL occurs on ornamental plants produced in greenhouses or containers, and to a very limited extent on sod farms or by professional lawn care applicators to commercial turf. No homeowner applicator exposures were assessed as the product is not sold to homeowners and only professional application would occur. There is the potential for residential post-application exposure to adults and children entering treated sites in recreational areas. No assessments for adult males and toddlers were done since the endpoint of concern is for females 13+ only. Using screening level conditions proposed in EPA's SOP for Residential Exposure Assessments (December 1997, EPA) and the proposed changes to the SOP (September, 1999, EPA), short-term exposure and risk were estimated for residential adult females. A dermal

absorption factor of 12% from a dermal penetration study in rats submitted by Bayer (MRID #44538505) was used. Based on the assumptions below and the default factors from the SOP, a MOE of 2,299 (Exp=0.07 mg/kg/day) is obtained for adult females. This is well above the level of concern (LOC) for propamocarb hydrochloride based on a MOE of 100. This analysis is a very conservative estimate based on EPA screening level procedures. Actual exposures are likely to be much lower, if they occur at all.

*D. Cumulative Effects*

Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." The precise mechanism of toxicity for propamocarb hydrochloride is unknown. Although a member of the carbamate group of pesticides, propamocarb hydrochloride is not an *n*-methyl carbamate, and demonstrated no inhibitory effects on blood or brain cholinesterase following either acute or repeated oral administrations to rats and dogs. *In vitro* studies using rat or dog blood plasma showed very slight cholinesterase inhibitory effects only at extremely high dose levels, equivalent to about 2,200 mg/kg bodyweight. This level is 20,000X the established RfD for propamocarb hydrochloride. Thus, no cumulative effects with other carbamates are anticipated. There is no other available data to determine whether propamocarb hydrochloride has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, propamocarb hydrochloride does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance petition, therefore, it has not been assumed that propamocarb hydrochloride has a common mechanism of toxicity with other substances.

*E. Safety Determination*

1. *U.S. population.* Using the conservative assumptions described above, based on the completeness and reliability of the toxicity data, it is concluded that chronic dietary exposure to the proposed uses of propamocarb hydrochloride will utilize at most 18% of the chronic reference dose for the U.S. population. The actual exposure is likely to be much less as more realistic data and models are developed. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate exposure over a lifetime will not pose appreciable risk to human health. The acute population of concern, female 13+ utilizes 7% of the acute RfD. Again, this is a Tier I highly conservative assessment and actual exposure is likely to be far less. A very conservative "worst-case" aggregate assessment for females 13+ results in utilization of 11% of the RfD. DWLOCs based on the dietary and aggregate exposures are greater than highly conservative estimated levels, and would be expected to be well below the 100% level of the RfD, if they occur at all. Therefore, there is a reasonable certainty that no harm will occur to the U.S. population from aggregate exposure (food, drinking water, and non-dietary) to residues of propamocarb hydrochloride.

2. *Infants and children.* No treatment-related effects to either parental animals or offspring were noted in either a 3–generation rat reproduction study at dose levels up to 1,000 ppm (33.3 mg/kg/day) or a 2–generation rat reproduction study at dose levels up to 1,250 ppm (81 mg/kg/day in males, 127 mg/kg/day in females). No evidence of teratogenicity was noted in either rat or rabbit developmental toxicity studies, even at maternally toxic dose levels. Increased post-implantation loss was noted in the rabbit study, but only at maternally toxic dose levels. The NOAEL for both maternal and developmental toxicity in rabbits was 150 mg/kg/day.

Decreased fetal weights, increased post-implantation loss and retarded ossification were noted in rats, and the developmental NOAEL of 221 mg/kg/day was lower than the maternal NOAEL of 740 mg/kg/day.

FFDCA section 408 provides that the Agency may apply an additional safety factor for infants and children to account for prenatal and postnatal toxicity or incompleteness of the database. The toxicology database for propamocarb hydrochloride regarding potential prenatal and postnatal effects in children is complete according to existing Agency data requirements and does not indicate any particular developmental or reproductive concerns, therefore an additional UF to protect infants and children is not needed. Using the conservative assumptions described in the exposure section above, the percent of the chronic RfD that will be used for exposure to residues of propamocarb hydrochloride in food for children 1 to 6 (the most highly exposed sub group) is 24%. Infants utilize 4% of the chronic RfD. There are no chronic non-dietary concerns for infants and children.

All DWLOCs are higher than the worst case DWECs and are expected to use well below 100% of the RfD. Therefore, there is a reasonable certainty that no harm will occur to infants and children from aggregate exposure to residues of propamocarb hydrochloride.

*F. International Tolerances*

The Codex Alimentarius Commission (Codex) has established tolerances (maximum residue levels) for propamocarb hydrochloride in the following raw agricultural commodities: Beetroot at 0.2 ppm, brussel sprouts at 1.0 ppm, cabbage (head) at 0.1 ppm, cauliflower at 0.2 ppm, celery at 0.2 ppm, cucumber at 2.0 ppm, lettuce (head) at 10 ppm, pepper (sweet) at 1.0 ppm, radish at 5.0 ppm, strawberry at 0.1 ppm and tomato at 1.0 ppm.

[FR Doc. E4–464 Filed 3–9–04; 8:45 am]
BILLING CODE 6560–50–S

## ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0055; FRL–7346–6]

### Experimental Use Permit; Receipt of Amendment/Extension Applications

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

**ACTION:** Notice.

**SUMMARY:** This notice announces receipt of applications 68467–EUP–7 and 29964–EUP–5 from Mycogen Seeds c/o Dow Agrosciences LLC and Pioneer Hi-Bred International requesting experimental use permit (EUP) amendment/extensions for *Bacillus thuringiensis* Cry34/35Ab1 protein and the genetic material necessary for its production (from the insert of plasmid PHP 17662) in corn. The Agency has determined that the applications may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting comments on the applications.

**DATES:** Comments, identified by docket ID number OPP–2004–0055, must be received on or before April 9, 2004.

**ADDRESSES:** Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

**FOR FURTHER INFORMATION CONTACT:** Mike Mendelsohn, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8715; e-mail address: *mendelsohn.mike@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

This action is directed to the public in general. This action may, however, be of interest to those persons who are interested in agricultural biotechnology or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA) or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

### *B. How Can I Get Copies of this Document and Other Related Information?*

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0055. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

### *C. How and To Whom Do I Submit Comments?*

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2004–0055. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2004–0055. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access"

system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2004–0055.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2004–0055. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

*D. How Should I Submit CBI to the Agency?*

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

*E. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

**II. Background**

In the **Federal Register** of January 6, 2004 (69 FR 658) (FRL–7328–5), EPA announced the issuance of the EUPs 68467–EUP–7 and 29964–EUP–5 to Mycogen Seeds c/o Dow AgroSciences LLC, 9330 Zionsville Road, Indianapolis, IN 46268–1054 and Pioneer Hi-Bred International, P.O. Box 552, Johnston, IA 50131–0552. Mycogen Seeds c/o Dow AgroSciences and Pioneer Hi-Bred have requested to amend and extend these EUPs through April 30, 2006, for *Bacillus thuringiensis* Cry34/35Ab1 protein and the genetic material necessary for its production (from the insert of plasmid PHP 17662) in corn.

For Mycogen Seeds/Dow AgroSciences LLC, 1,177 acres are proposed during the 2004 season and 7,687 acres are proposed for the 2005 season under EUP 68467–EUP–7 for testing in Arizona, Colorado, Delaware, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Michigan, Minnesota, Missouri, Nebraska, New Jersey, New York, North Dakota, Ohio, Pennsylvania, Puerto Rico, South Dakota, Tennessee, Texas, Vermont, and Wisconsin. Testing is to include maize breeding and observation nursery, maize agronomic observation, herbicide tolerance, maize efficacy, insect resistance management, and maize demonstration trials.

For Pioneer Hi-Bred International, 9,050 acres are proposed during the 2004 season and 13,050 acres are proposed for the 2005 season under EUP 29964–EUP–5 for testing in Alabama, Arizona, California, Colorado, Delaware, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Carolina, North Dakota, Ohio, Pennsylvania, Puerto Rico, South Dakota, Tennessee, Texas, Washington, and Wisconsin. Testing is to include insect resistance management, maize agronomic observation, maize breeding and observation, maize demonstration, maize efficacy, maize research seed production, maize inbred seed increase, maize regulatory studies, non-target organism, and herbicide tolerance trials.

**III. What Action is the Agency Taking?**

Following the review of the Mycogen Seeds c/o Dow Agrosciences LLC and Pioneer Hi-Bred International applications and any comments and data received in response to this notice, EPA will decide whether to issue or deny the EUP requests for the EUP programs, and if issued, the conditions under which it is to be conducted. Any issuance of EUPs will be announced in the **Federal Register**.

**IV. What is the Agency's Authority for Taking this Action?**

The specific legal authority for EPA to take this action is under FIFRA section 5.

**List of Subjects**

Environmental protection, Experimental use permits.

Dated: February 26, 2004.

**Janet L. Andersen,**

*Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.*

[FR Doc. E4–462 Filed 3–9–04; 8:45 am]

BILLING CODE 6560–50–S

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7633–6]**

## Development Plan for the Causal Analysis/Diagnosis Decision Information System (CADDIS)

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of availability.

**SUMMARY:** This notice announces the availability of a final report titled.

*Development Plan for the Causal Analysis/Diagnosis Decision Information System* (CADDIS) (EPA/600/R–03/074, January 2004), which was prepared by the U.S. Environmental Protection Agency's (EPA) National Center for Environmental Assessment (NCEA) of the Office of Research and Development (ORD).

**ADDRESSES:** The document will be made available electronically through the NCEA Web site (*www.epa.gov/ncea*). A limited number of paper copies will be available from the EPA's National Service Center for Environmental Publications (NSCEP), P.O. Box 42419, Cincinnati, OH 45242; telephone: 1–800–490–9198 or 513–489–8190; facsimile: 513–489–8695. Please provide your name, your mailing address, the title and the EPA number of the requested publication.

**FOR FURTHER INFORMATION CONTACT:** The Technical Information Staff, National Center for Environmental Assessment/Washington Office (8623D), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Telephone: 202–564–3261; fax: 202–565–0050; e-mail: *nceadc.comment@epa.gov*.

**SUPPLEMENTARY INFORMATION:** This document describes a strategy for developing the Causal Analysis/Diagnosis Decision Information System (CADDIS). CADDIS is envisioned as a decision support system that will help investigators in EPA Regions, states, and tribes find, access, organize, and share information useful for causal evaluations in aquatic systems. It will include supporting case studies and analysis tools, and it will provide access to databases that contain information useful for causal evaluations. The system will be developed incrementally and iteratively, and frequent user input and feedback will be essential to the system's success.

Dated: February 25, 2004.

**Peter W. Preuss,**

*Director, National Center for Environmental Assessment.*

[FR Doc. 04–5370 Filed 3–9–04; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7633–5]**

## Final National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges From Construction Activities That Are Classified as Associated With Industrial Activity

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

**ACTION:** Notice of final National Pollutant Discharge Elimination System (NPDES) general permit reissuance for storm water discharges from construction activities that are classified as "associated with industrial activity."

**SUMMARY:** EPA Region 4 is reissuing a final NPDES general permit for discharges from large and small construction activities. The reissued permit covers Phase II (small) construction activities and replaces the previous permit issued March 31, 1998 (63 FR 15622), and modified on April 28, 2000 (64 FR 25122), which covered Phase I (large) construction activities. The reissued permit covers facilities on Indian country lands within the states of Alabama, Florida, Mississippi and North Carolina.

**DATES:** The effective date of this permit is May 1, 2004, and will expire at midnight April 30, 2009.

**ADDRESSES:** The administrative record is available for inspection and copying at the United States Environmental Protection Agency, Region 4, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, GA 30303–8960.

**FOR FURTHER INFORMATION CONTACT:** For further information on the final permit, the Notice of Intent (NOI) or Notice of Termination (NOT), contact Mr. Floyd Wellborn of the NPDES and Biosolids Permits Section at (404) 562–9296 or by email at *wellborn.floyd@epa.gov* or Mr. Michael Mitchell at (404) 562–9303 or by email at *mitchell.michael@epa.gov*. Copies may be obtained by writing the United States Environmental Protection Agency, Region 4, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, GA 30303–8960, Attention: Ms. Ann Brown, or calling (404) 562–9288. In addition, copies of the final NPDES general permit, fact sheet or other relevant documents may be downloaded at *www.epa.gov/region4/water/permits/stormwater.html*.

**SUPPLEMENTARY INFORMATION:**

### I. Procedures for Reaching a Final Permit Decision

A formal hearing is available to challenge any NPDES permit issued according to the regulations at 40 CFR 124.15, except for a general permit as cited by 40 CFR 124.71. Within 120 days following notice of EPA's final decision for the general permit under 40 CFR 124.15, any interested person may appeal the permit in the Federal Court of Appeals in accordance with section 509(b)(1) of the CWA. Persons affected by a general permit may not challenge the conditions of a general permit as a right in further Agency proceedings. They may instead either challenge the general permit in court, or apply for an individual permit as specified at 40 CFR 122.21, as authorized at 40 CFR 122.28, and then request a formal hearing on the issuance or denial of an individual permit.

### II. Background

*A. Statutory and Regulatory History*

Section 405 of the Water Quality Act of 1987 added section 402(p) to the CWA, which directed the EPA to develop a phased approach to regulate the storm water discharges under the National Pollutant Discharge Elimination System (NPDES) program. EPA published a final regulation on the first phase of this program on November 16, 1990, establishing permit application requirements for "storm water discharges associated with industrial activity." Construction activities that disturb at least five acres of land or are part of a larger plan of development and have point source discharges to waters of the U.S., are defined in 40 CFR 122.26(b)(14)(x) as an "industrial activity." Upon the advent of the Phase II storm water regulations, these activities became referred to as large construction activities.

Phase II of the storm water program was published in the **Federal Register** on December 8, 1999. Phase II includes sites disturbing at least one acre of land and less than five acres, as well as sites less than one acre of land area that are part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. Small construction activity is defined at 40 CFR 122.26(b)(15)(i).

*B. Significant Changes From the 1998 General Permit and the Subsequent 2000 Modification*

1. The organization and numbering of the permit has been changed from the March 1998 (63 FR 15622) permit and

the April 2000 (64 FR 25122) permit modification to mirror the organization and numbering of the national permit issued by various other EPA regions in the July 2003 **Federal Register** (68 FR 39087). This change also will support the use of the NOI form used to apply for coverage under the general permit. The NOI directs the applicant to certain sections of the permit. Therefore, it is imperative that the permit sections cited correspond to the topics referenced in the NOI.

2. Coverage for discharges from small construction activities has been added to the eligibility provisions.

3. The eligibility conditions were clarified regarding facilities discharging to water bodies with Total Maximum Daily Loads (TMDLs).

4. Waivers have been added for qualifying discharges from small construction activities.

5. The permit coverage area has been changed. This reissuance no longer covers facilities on non-Indian lands in the State of Florida. It does continue to cover facilities on Indian Country lands within the States of Alabama, Florida, Mississippi and North Carolina.

6. The NOI has been changed from the previous permit. *See* page 78118 of the December 20, 2002, **Federal Register** (67 FR 78116) for a detailed discussion on the changes.

7. Authorization of coverage is seven (7) days from the date of the acknowledgment letter rather than two (2) days from the postmark of the NOI.

8. The deadlines for submitting the NOI have changed in Part 2.2 of the permit to reflect the new authorization schedule.

9. The size rain event trigger for inspections of the site have been changed from a rain event of 0.25 inches to one that is 0.5 inches in a 24 hour period.

10. Addendum F, a list of reportable quantities of hazardous substances, has been added to the permit.

11. Part 3.2.A. has been changed to allow off site retention of the SWPPP where necessary.

*C. Summary of Terms and Conditions of the General Permit*

1. Discharges Covered

Operators of construction activities disturbing at least one acre of land, or less than an acre but is part of a larger plan of development or sale, on Indian Country lands within the States of Alabama, Florida, Mississippi and North Carolina may be eligible to obtain coverage under this permit for allowable storm water and non-storm water discharges specifically listed in the permit.

2. Limitations on Coverage

The general permit retains the eligibility restrictions from the previous permit. The permit does not regulate post-construction discharges, storm water discharges commingled with non-storm water discharges, except as noted, discharges previously covered by another NPDES, discharges which cause or contribute to a violation of a water quality standard, discharges which adversely affect threatened or endangered species or their critical habitat, or discharges which adversely affect a listed or proposed to be listed historic place or resource. In addition, the permit includes a new restriction on discharges of storm water to waters for which a TMDL has been approved or established. Discharges of storm water from construction activities on at least one acre of land, or less than one acre that are part of a larger plan of development or sale, that do not meet the eligibility requirements of the general permit would be required to submit an individual permit application.

3. Deadlines and Permit Application Process

To obtain discharge authorization under the general permit, dischargers must submit an NOI, which requires basic information about the facility owner/operator, location and discharge(s). NOI due dates, for construction activities on Indian lands in Alabama, Florida, Mississippi and North Carolina, are as follows:

i. Ongoing construction activities previously covered by an NPDES permit, must submit an NOI within 60 days of the effective date of this permit.

ii. New construction activities, after the effective date of this permit, must submit a complete and accurate NOI in accordance with the requirements of Part 2.1, prior to the commencement of construction activities. Authorization to discharge is seven (7) days after the date of the acknowledgment letter (*see* part 2.4).

4. Storm Water Pollution Prevention Plans

The general permit requires operators covered by the permit to develop and implement a SWPPP. All SWPPPs must be developed in accordance with sound engineering practices and developed specific to the site. The SWPPP must be prepared prior to submission of the NOI.

5. Monitoring Requirements

The permittee shall monitor by grab sample, during regular working hours, once per month within the first 30 minutes of a qualifying event or within the first 30 minutes of the beginning of the discharge of a previously collected qualifying event for Settleable Solids (ml/l), Total Suspended Solids (mg/l), Turbidity (NTUs) and Flow (MGD).

**III. Executive Order 12866**

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health, or safety, or State, local, or Tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. OMB has exempted review of NPDES general permits under the terms of Executive Order 12866.

**IV. Regulatory Flexibility Act**

The regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rule making requirements under the Administrative Procedures Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

Issuance of an NPDES general permit is not subject to rule making requirements, including the requirement for a general notice of proposed rule making, under APA section 533 or any other law, and is thus not subject to the RFA requirements.

The APA defines two broad, mutually exclusive categories of agency action—"rules" and "orders." APA section 551(4) defines rule as "an agency statement of general or particular applicability and future effect designed to implement, interpret or prescribe law or policy or describing the organization, procedure, or practice or requirements of an agency * * *" APA section 551(6) defines orders as "a final disposition

* * * of an agency in a matter other than rule making but including licensing." APA section 551(8) defines "license" to "include * * * an agency permit * * *" The APA thus categorizes a permit as an order, which by the APA's definition is not a rule. Section 553 of the APA establishes "rule making" requirements. APA section 551(5) defines "rule making" as "the agency process for formulating, amending, or repealing a rule." By its terms, section 553 applies only to rules and not to orders, exempting by definition permits.

**V. Unfunded Mandates Reform Act**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their "regulatory actions" to refer to regulations. (*See, e.g.*, UMRA section 401, "Each agency shall * * * assess the effects of Federal regulatory actions * * * (other than to the extent that such regulations incorporate requirements specifically set forth in law).") UMRA section 102 defines "regulation" by reference to 2 U.S.C. 658 which in turn defines "regulation" and "rule" by reference to section 601(2) of the RFA. That section of the RFA defines "rule" as "any rule for which the agency publishes a notice of proposed rule making pursuant to section 553(b) of the APA, or any other law."

As discussed in the RFA section of this notice, NPDES general permits are not "rules" by definition under the APA and thus not subject to the APA requirement to publish a notice of proposed rule making. NPDES general permits are also not subject to such a requirement under the CWA. While EPA publishes a notice to solicit public comment on draft general permits, it does so pursuant to the CWA section 402(a) requirement to provide an opportunity for a hearing. Therefore, NPDES general permits are not "rules" for RFA or UMRA purposes.

**VI. Paperwork Reduction Act**

EPA HQ has reviewed the requirements imposed on regulated facilities resulting from the construction general permit under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* The information collection requirements of the construction general permit for large construction activities have already been approved by the Office of Management and Budget (OMB) (OMB Control No. 2040–0188) in previous submissions made for the NPDES permit program under the provisions of the CWA. Information collection requirements of the construction general permit for small construction activities (OMB Control No. 2040–0211) were approved by OMB on June 12, 2003, and published in the **Federal Register** on July 25, 2003 (68 FR 44076).

**James D. Giattina,**

*Director, Water Management Division.*

[FR Doc. 04–5371 Filed 3–9–04; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL MARITIME COMMISSION

### Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

*Agreement No.:* 011409–009.
*Title:* Transpacific Carrier Services, Inc. Agreement.
*Parties:*
Westbound Transpacific Stabilization Agreement,
Transpacific Space Utilization Agreement,
Asia North America Eastbound Rate Agreement,
Transpacific Stabilization Agreement and their constituent member lines:
American President Lines, Ltd.;
APL Co. Pte Ltd.;
Evergreen Marine Corporation;
Hanjin Shipping Co., Ltd.;
Hapag-Lloyd Container Linie GmbH;
Hyundai Merchant Marine Co., Ltd.;
Kawasaki Kisen Kaisha, Ltd.;
A.P. Moller-Maersk A/S;
Mitsui O.S.K. Lines, Ltd.;
Nippon Yusen Kaisha, Ltd.;
Orient Overseas Container Line Limited;
P&O Nedlloyd B.V.;
P&O Nedlloyd Limited;
Yang Ming Marine Transport Corp.;
COSCO Container Lines Co., Ltd.;
CMA CGM, S.A.; and
China Shipping Container Lines Co., Ltd.
*Synopsis:* The amendment updates the agreement language as well as several member lines' corporate names.

*Agreement No.:* 011702–002.
*Title:* Hapag-Lloyd/Lykes Space Charter Agreement.
*Parties:*
Hapag-Lloyd Container Linie GmbH and
Lykes Lines Limited LLC.
*Synopsis:* The amendment adds Malta to the geographic scope of the agreement. The parties request expedited review.

*Agreement No.:* 011839–001.
*Title:* Med-Gulf Space Charter Agreement.
*Parties:*
Lykes Lines Limited LLC,
Compania Chilena de Navegacion Interoceanica, and
Compania Sud Americana de Vapores S.A.
*Synopsis:* The amendment adds Malta to the geographic scope of the agreement. The parties request expedited review.

*Agreement No.:* 011870.
*Title:* Indian Subcontinent Discussion Agreement.
*Parties:*
Evergreen Marine Corp. (Taiwan) Ltd.,
Hapag-Lloyd Container Linie GmbH,
Nippon Yusen Kaisha,
P&O Nedlloyd Limited, and
P&O Nedlloyd B.V.
*Synopsis:* The agreement authorizes the parties to exchange information and discuss and reach voluntary agreement on variety of commercial issues in the trade from ports and points in India, Pakistan, Bangladesh, and Sri Lanka to all ports and points in the United States.

*Agreement No.:* 201155
*Title:* Los Angeles/Long Beach Regional Goods Movement Efficiency Team Agreement.
*Parties:*
Port of Los Angeles,
Port of Long Beach,
P&O Nedlloyd Limited,
Mitsui O.S.K. Lines, and
Pasha Stevedoring & Terminals.
*Synopsis:* The proposed agreement would authorize the parties to confer, discuss, exchange information, and make recommendations with respect to rates, charges, practices, legislation, regulations, terminal operations, and port administration on matters concerning the establishment of extended gate programs, night-time terminal operations, and rail utilization for the ports of Los Angeles and Long Beach. The parties request expedited review.

Dated: March 5, 2004.

By Order of the Federal Maritime Commission.

**Bryant L. VanBrakle,**

*Secretary.*

[FR Doc. 04–5387 Filed 3–9–04; 8:45 am]

BILLING CODE 6730–01–P

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants:

Alton Container, Inc., 3020 Old Ranch Parkway, Suite 300, Seal Beach, CA 90740. Officers: Sam Yong Ryu, Vice President (Qualifying Individual), Eunice H. Kim, CEO.

Kingsmart Express Container, Inc., 219 S. Chandler Avenue, #E, Monterey Park, CA 91754. Officers: Zheng (Robert) Wang, Secretary (Qualifying Individual), Wan-Lan Zhang, CFO.

Amerikan Fracht Inc. 368 Sycamore Grove Street, Simi Valley, CA 93065. Officers: Alice Lin, Corporate Secretary (Qualifying Individual), Lan Ju, Director.

Concordia Shipping Line Inc., 168 SE 1st Street, Miami, FL 33131. Officer: Vernon St. Anthony Scott, President (Qualifying Individual).

Fargo Transportation Service, 9660 Flair Drive, Suite 226, El Monte, CA 91731. Officers: Lucia Y. Babb, Corporate Secretary (Qualifying Individual).

Logistics Pan-America Corp., 130–27 59th Avenue, 2nd FL, Flushing, NY 11355. Officers: Yachuan Gu, President (Qualifying Individual), Tian Shen, Vice President.

Port Asia-USA Cargo Management LLC, 1231 East 230th Street, Carson, CA 90745. Officer: Jesus C. Domingo, President (Qualifying Individual).

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicant:

Ship Smart, Inc., 640 Dowd Avenue, Elizabeth, NJ 07201. Officers: Mark Smolec, Owner (Qualifying Individual), Bogdan Sokolowski, President.

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants:

Auto City Center Inc., 15846 W Warren Avenue, Detroit, MI 48228. Officers: Nachaat Mazeh, Manager (Qualifying Individual), Ghassan H. Tarraf, President.

Capital Exports, Inc., 21164 Twinridge Square, Sterling, VA 20164. Officer: Said Masrour, President (Qualifying Individual).

Dated: March 5, 2004.

**Bryant L. VanBrakle,**

*Secretary.*

[FR Doc. 04–5388 Filed 3–9–04; 8:45 am]

BILLING CODE 6730–01–P

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 5, 2004.

**A. Federal Reserve Bank of Atlanta** (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

*1. BankEast Corporation*, Knoxville, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of The Citizens Bank of Gainesboro, Gainesboro, Tennessee.

*2. Farmers Bancorp, Inc.*, Lynchburg, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of The Farmers Bank of Lynchburg, Lynchburg, Tennessee.

**B. Federal Reserve Bank of Chicago** (Patrick M. Wilder, Managing Examiner) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

*1. Heartland Financial USA, Inc.*, Dubuque, Iowa; to acquire 100 percent of the voting shares of Rocky Mountain Bancorporation, Inc., Billings, Montana, and thereby indirectly acquire Rocky Mountain Bank, Billings, Montana.

**C. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166-2034:

*1. FSB Bancshares, Inc.*, Henderson, Tennessee; to acquire 35 percent of the voting shares of Merchants and Planters Bancshares, Inc., Toone, Tennessee, and thereby indirectly acquire Merchants and Planters Bank, Toone, Tennessee.

Board of Governors of the Federal Reserve System, March 4, 2004.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 04–5307 Filed 3–9–04; 8:45 am]

BILLING CODE 6210–01–S

## FEDERAL RESERVE SYSTEM

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Board of Governors of the Federal Reserve System.

**TIME AND DATE:** 12:00 p.m., Monday, March 15, 2004.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

**FOR FURTHER INFORMATION CONTACT:** Michelle A. Smith, Director, Office of Board Members; 202–452–2955.

**SUPPLEMENTARY INFORMATION:** You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications

scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Board of Governors of the Federal Reserve System, March 5, 2004.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 04–5448 Filed 3–8–04; 11:03 am]

BILLING CODE 6210–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Meeting of the Presidential Advisory Council on HIV/AIDS

**AGENCY:** Office of the Secretary, Office of Public Health and Science, HHS.

**ACTION:** Notice of meeting.

**SUMMARY:** As stipulated by the Federal Advisory Committee Act, the Department of Health and Human Services (DHHS) is hereby giving notice that the Presidential Advisory Council on HIV/AIDS (PACHA) will hold a meeting. This meeting is open to the public. A description of the Council's functions is included also with this notice.

**DATE AND TIME:** March 29, 2004, 9 a.m. to 5 p.m., and March 30, 2004, 9 a.m. to 4 p.m.

**ADDRESSES:** Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201. Conference Room 800 on March 29 and Conference Room 705A on March 30, 2004.

**FOR FURTHER INFORMATION CONTACT:** Josephine Robinson, Acting, Executive Director, Presidential Advisory Council on HIV/AIDS, U.S. Department of Health and Human Services, Hubert H. Humphrey Building, 200 Independence Avenue, SW., 7th Floor, Room 701H, Washington, DC 20201; (202) 690–7440 or visit the Council's Web site at *www.pacha.gov.*

**SUPPLEMENTARY INFORMATION:** PACHA was established by Executive Order 12963, dated June 14, 1995, as amended by Executive Order 13009, dated June 14, 1996. PACHA was established to provide advice, information, and recommendations to the President regarding programs and policies intended to (a) promote effective prevention of HIV disease, (b) advance research on HIV and AIDS, and (c) promote quality services to persons living with HIV disease and AIDS. PACHA was established to serve solely as an advisory body to the President and the Secretary of Health and Human Services. PACHA is composed of not more than 35 members. PACHA membership is determined by the Secretary from individuals who are considered authorities with particular expertise in, or knowledge of, matters concerning HIV/AIDS.

The agenda for this meeting includes the following topics: HIV/AIDS prevention, care and treatment, and global HIV/AIDS issues. Time will be allotted during the meeting for public comment.

Public attendance is limited to space available and pre-registration is required for both attendance and public comment. Any individual who wishes to attend and/or comment must call (202) 690–5560 to register. Individuals must provide a government issued photo ID for entry into the meeting. Individuals who need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the registrar.

Members of the public will have the opportunity to provide comments at the meeting. Public comment will be limited to three (3) minutes per speaker and to time available. Written testimony, not exceed five (5) pages, will be accepted by mail or facsimile at 202/690–7425. Written testimony will not be accepted after 5 p.m., Wednesday, March 24, 2004

Dated: February 27, 2004.

**Josephine Bias Robinson,**

*Executive Director (Acting), Presidential Advisory Council on HIV/AIDS.*

[FR Doc. 04–5344 Filed 3–9–04; 8:45 am]

BILLING CODE 4150–28–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Varicella and Viral Vaccine Preventable Disease Surveillance and Epidemiologic Studies

*Announcement Type:* New.

*Funding Opportunity Number:* PA 04116.

*Catalog of Federal Domestic Assistance Number:* 93.185.

*Key Dates:*

*Letter of Intent Deadline:* March 22, 2004.

*Application Deadline:* May 12, 2004.

#### I. Funding Opportunity Description

**Authority:** Public Health Service Act, Section 317(k)(1), 42 U.S.C. 247b(k)(1), as amended.

*Purpose:* The purpose of the program is to support population-based active surveillance for varicella, herpes zoster, and other viral Vaccine Preventable Diseases (VPD), to assess vaccination coverage by age group and to conduct applied epidemiological research on the above mentioned viral VPD. This program addresses the "Healthy People 2010" focus area(s) of priority 20.

Measurable outcomes of the program will be in alignment with the following performance goal for the National Immunization Program (NIP): Reduce the number of indigenous cases of varicella and other viral VPDs.

*Research Objectives:* 1.To evaluate the impact of varicella vaccination program on varicella disease and herpes zoster, including the impact of disease control and prevention activities.

2. To conduct applied epidemiological research related to varicella, herpes zoster, varicella vaccine policy and/or other viral VPD.

3. To conduct a study to assess immunity against varicella among vaccinated health care workers. For those who lack detectable antibodies, measure anamnestic response after receiving a third dose.

4. To evaluate the burden of disease of one or more current VPD, like influenza, or that may be vaccine preventable in the future like rotavirus, human papillomavirus (HPV), herpes simplex virus type 2 (HSV2), respiratory syncytial virus (RSV), or CMV cytomegalovirus (CMV).

Applicants may apply for objective 1, 2, 3, and 4 alone, or any or all combination of the four components. Separate budgets are required for each program component.

*Activities:* Awardee activities for this program are as follows: Under objective 1:

- Implement, conduct, maintain, and evaluate active population based surveillance systems with the capacity to monitor varicella and/or herpes zoster disease. To ensure statistical validity, these surveillance areas must have populations of at least 300,000 for varicella and at least 500,000 for herpes zoster to provide a sufficient number of varicella and herpes zoster cases each year.
- Perform case investigations for varicella and/or herpes zoster, for all ages, and collect, analyze, and disseminate information using these data.

• Collect and report information on vaccine coverage by age group. For varicella age group: less than 1 year, 1 year, 2 years, 3 years, 4 years, 5 years, 6 years, 7 years, 8–9 years, 10–12 years, 13–14 years, 15–19 years and greater than 20 years.

• Develop, implement and evaluate varicella prevention and control strategies including outbreak control.

• Provide laboratory specimens such as disease-causing isolates to appropriate organizations (which may include CDC) for laboratory evaluation needed for varicella and/or herpes zoster surveillance or as part of epidemiological studies on varicella and/or herpes zoster, *e.g.* virus strain identification, confirmation of breakthrough disease, and molecular epidemiological studies.

• Function as part of a network of surveillance sites. Submit data to CDC according to project procedures.

*Under Objective 2:*

• Conduct applied epidemiological research for varicella and/or herpes zoster. Examples of such projects include but are not limited to the following: evaluation of risk factors for varicella vaccine failure; evaluation of completeness of reporting by age group; risk factors for severe varicella disease and hospitalization; evaluation of vaccine effectiveness; measurement of reliability of physician diagnosis of breakthrough disease; assessment of duration of immunity to varicella among vaccinees in low-varicella incidence settings; virus strain identification for herpes zoster in vaccinees; assessment of herpes zoster hospitalizations and trend of herpes zoster over time.

And/or

• Conduct applied epidemiological research for other viral VPD. Examples of such projects include but are not limited to the following: risk factors for severe influenza disease and hospitalization; studies of vaccine effectiveness; planning and implementation of community based demonstration/interventions to increase vaccination; impact evaluation of implemented demonstration/interventions on disease incidence and prevalence; evaluation of cost effectiveness of suggested demonstration/interventions as well as illness and severity.

*Under objective 3:*

• The study is going to assess the need for a third dose of varicella vaccine among health care workers (HCW) who are seronegative after having received two doses. To ensure statistical power, the study site should demonstrate ability to enroll at least 200 HCW who have previously received two doses of varicella vaccine (based on assumption of 15 percent susceptibility among vaccinated HCW).

• Identify HCW who have previously received two doses of varicella vaccine. Obtain blood samples and send them to CDC for serologic and cellular immunity testing. Through interviews and using standardized forms, collect data on potential risk factors (demographics, varicella vaccination and disease history, time since vaccination, work place/type (pediatrics, infectious disease, etc), children at home, underlying disease, and exposure to varicella cases since vaccination) for susceptibility following two doses. Administer a third dose of varicella vaccine to HCW who are seronegative as measured by IgG gpELISA and collect blood samples seven to ten days and four to six weeks after vaccination for testing humoral and cellular immunity. Calculate the proportion of HCW who are protected by showing an anamnestic response as measured by antibody levels and correlate it to their cell mediated immunity (CMI) response prior to third dose. Examine risk factors for not having antibodies following two doses.

*Under Objective 4:*

• Implement, maintain, and evaluate a surveillance system with the capacity to monitor one or more viral VPD (other than varicella and herpes zoster) like influenza, rotavirus, HPV, HSV2, RSV, or CMV. To ensure statistical validity, these surveillance areas must have populations of at least 500,000 to provide a sufficient number of cases each year and include child care centers and schools among the sites under surveillance.

• Develop, implement and evaluate influenza and/or other viral VPD prevention and control strategies among children.

• Provide laboratory specimens such as disease-causing isolates to appropriate organizations (which may include CDC) for laboratory evaluation needed for influenza and/or other viral VPD surveillance or as part of epidemiological studies on influenza and/or other viral VPD, *e.g.* virus strain identification and molecular epidemiological studies.

For those choosing influenza, activities may consider:

• Collect and report information on vaccine coverage by age group. For influenza age groups: 6–23 months and their household contacts; at risk children 2–7 years, 8–19 years and their household contacts.

• Evaluate the feasibility of pediatric hospital-based influenza virologic data for following trends in the impact of influenza in children 6–23 months old.

• Conduct applied epidemiological research for influenza. Examples of such projects include but are not limited to the following: risk factors for severe influenza disease and hospitalization; studies of vaccine effectiveness; planning and implementation of community based demonstration/interventions to increase influenza vaccination; measure impact and monitor implementation of the Advisory Committee on Immunization Practices (ACIP) recommendations for influenza vaccination of 6–23 month old children, at-risk children, and their household contacts: offering influenza vaccination at obstetrics and gynecology clinics, public health clinics, private providers, day care facilities, school based vaccination, and others; evaluation of cost effectiveness of suggested demonstration/interventions.

*General Activities (for all objectives):*

• Manage, analyze and interpret data and present and publish important public health findings.

• Participate in planning meetings to coordinate varicella, herpes zoster, other viral VPD, and influenza project activities.

• Provide surveillance data on a quarterly basis and provide semiannual progress reports for varicella, herpes zoster, and other viral VPD and provide timely progress reports for influenza during influenza season and the recommended influenza vaccination period (September–May).

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:*

• Provide consultation, scientific and technical assistance in general operation of the project and in the design and conduct of applied research projects.

• Provide assistance to recipients regarding development and implementation of all surveillance activities, data collection methods including a standard case investigation form, and analysis of data.

• Assist in the development and implementation of a standard data management process, including development of computer programs for data entry and interim analyses.

• Assist in monitoring and evaluating scientific and operational accomplishments of the varicella, herpes zoster, other viral VPD, and influenza projects and progress in achieving the purpose and overall goals of this program.

• Participate in analysis and interpretation of data and in presentation and publication of findings.

• In addition, for Objective 3, conduct serologic and CMI testing on the samples collected.

**II. Award Information**

*Type of Award:* Cooperative Agreement.

CDC involvement in this program is listed in the Activities Section above.

*Fiscal Year Funds:* 2004.

*Approximate Total Funding:* $932,600.

*Approximate Number of Awards:* Two to five.

*Approximate Average Award:* $460,000 (This amount is for the first 12-month budget period, and includes both direct and indirect costs).

*Floor of Award Range:* $100,000.

*Ceiling of Award Range:* $603,000.

1. Varicella and/or herpes zoster surveillance (objective 1): Varicella/herpes zoster surveillance: $200,000; varicella surveillance alone: $150,000; herpes zoster surveillance alone: $100,000

2. Varicella-herpes zoster, other viral VPD epidemiological research (objective 2): $150,000

3. Varicella HCW study (objective 3): $102,600

4. Influenza and/or other viral VPD surveillance (objective 4): $150,000

*Anticipated Award Date:* August, 2004.

*Budget Period Length:* 12 Months.

*Project Period Length:* Five Years. For Objective 3, project period is 12 months.

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 organizations and by governments and their agencies, such as:

- Public nonprofit organizations
- Private nonprofit organizations
- 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*

CDC will accept and review applications with budgets greater than the ceiling of the award range.

*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, telephone number and fax phone 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.*

You must submit a research plan narrative with your application forms. The narrative must be submitted in the following format:

- Maximum number of pages: 30. If your narrative exceeds the page limit, only the first pages which are within the page limit will be reviewed.
- Font size: 12 point unreduced
- Double spaced
- Paper size: 8.5 by 11 inches
- Page margin size: One inch
- Single spaced, printed only on one side of page
- Held together only by rubber bands or metal clips; not bound in any other way.

Your research plan narrative should address the activities listed for the objectives/program components you are responding to, and which will be conducted over the entire project period, and must include the following items in the order listed: Background, Objectives, Methods, Plan of Operation, Plan of Evaluation and a separate Budget for each submitted program component. The Budget will not be counted as part of the stated page limit.

For each one of the program components you are responding to, the narrative should describe (where pertinent):

- The demographic characteristics of the general population which the surveillance system will cover.
- The epidemiology of varicella, herpes zoster, other viral VPD, and influenza. For varicella baseline epidemiological data, the time period in the surveillance population should be 1995–2003 and varicella vaccine coverage among specified age groups during the period 1995–2003. The availability of historical data for baseline disease trends for varicella by age group prior to, and following, implementation of a varicella vaccination program is required. These data should be comparable to that proposed for collection through this project in order to monitor trends. For other viral VPD and influenza, the time period would be two to three years of baseline data in 2000–2003. If available, for other viral VPD and influenza, vaccine coverage among specified age groups during the same period should be presented.
- The sources of reporting within the reporting area under study: Appropriate reporting and sources for surveillance should be identified and described in detail. If sampling is proposed, it must be described in detail including how it will be performed and how validity will be assured.
- The operation of the varicella, herpes zoster, and other viral VPD surveillance system and monitoring of influenza impact in children: This should include details of reporting, type and format of data to be obtained, mechanism for monitoring the system, and personnel requirements for obtaining, managing and analyzing data. The proposed systems should provide the basis for epidemiological studies of the impact of varicella, other viral VPD, and influenza vaccine, identify cases occurring in vaccinated individuals, document the severity of disease and facilitate public health action.
- A brief proposal for implementing and evaluating a disease prevention and/or control strategy for varicella, other viral VPD, and influenza.
- A brief proposal for applied epidemiological research studies (addressing issues other than disease prevention and control strategies) for varicella, herpes zoster, other viral VPD, and influenza. It would be advantageous to indicate the existence or the proposed establishment of collaboration with a state/city health department for outbreak response/prevention/control activities under applied epidemiological research.
- Background information and other data to demonstrate that the applicant has the appropriate organizational structure, administrative support, and ability to access appropriate target populations or study subjects.

Additional information may be included in the application appendices. The appendices will not be counted toward the narrative page limit. This additional information includes:

- The qualifications, including training and experience, of project personnel, and projected level of effort by each toward accomplishment of the proposed activities.
- Letters of support.
- Documentation of bona fide agent status.
- Curricular vitas.

Budget—Budget section should have separate line items for (1) Varicella and/or herpes zoster surveillance; (2) epidemiologic studies of varicella, herpes zoster, and/or other viral VPD; (3) Varicella HCW study; (4) Other viral VPD surveillance. For each line item show both Federal and non-Federal (*e.g.*, State funding) shares of total cost. A budget justification is required for all budget items, consistent with the purpose and objectives of the program. Letters of support should be included if applicants anticipate the participation of other organizations in conducting proposed activities.

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.

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: March 22, 2004. A Letter of Intent (LOI) is required for this Program Announcement. The LOI will not be evaluated or scored. Your LOI will be used to estimate the potential reviewer workload and to avoid conflicts of interest during the review. If you do not submit a LOI, you will not be allowed to submit an application.

*Application Deadline Date:* May 12, 2004.

*Explanation of Deadlines:* Applications must be received in the: Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1040, MSC 7710, Bethesda, MD 20892–7710.

Bethesda, MD 20817 (for express/courier service) 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.

This announcement is the definitive guide on application 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.

*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*

Restrictions, which must be taken into account while writing your budget, are as follows:

- Construction
- Real estate lease or purchase
- Vehicle purchase
- Vehicle lease, other than rental associated with travel for this project

Awards will not allow reimbursement of pre-award costs. 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: Beth Gardner, National Immunization Program, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, MS E–05, Atlanta, GA 30333, Telephone: 404–639–6101, FAX: 404–639–0108, E-mail: BGardner@cdc.gov.

*Application Submission Address:* Submit the original and three hard copies of your application by mail or express delivery service to: Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1040, MSC 7710, Bethesda, MD 20892–7710, Bethesda, MD 20817 (for express/courier service).

At the time of submission, two additional copies of the application must be sent to: Scientific Review Administrator, Beth Gardner, Centers for Disease Control and Prevention, National Immunization Program, 1600 Clifton Road, MS E–05, Atlanta, GA 30333, Telephone Number: 404–639–6101, FAX: 404–639–0108. 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?

- Adequacy of baseline data and availability of trend data for the diseases under surveillance and the proposed viral VPD as indicated under activities; and comparability of these data to the proposed surveillance system where adequate.
- Clear definition of the geographic area and population base in which the surveillance and proposed activities site will operate.
- Detailed description of the demographics of the proposed population base including the extent to which the population base is diverse in terms of demographics and special populations.
- Understanding the objectives of the cooperative agreement by demonstrating a clear understanding of the background and objectives and the feasibility of accomplishing the outcomes described.
- Quality of the proposed activities under program objectives regarding consistency with public health needs, intent of this program, feasibility, methodology/approach, and collaboration/participation of partner organizations.

*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 objective 1:*

- Description of existing capacity to perform surveillance for varicella and/or herpes zoster and to assess vaccine impact.
- Adequacy of plan for performing and maintaining varicella and/or herpes zoster surveillance and the extent to which the proposed sources of case report will ensure adequate sample size and representativeness of populations under surveillance.
- Adequacy of plan for monitoring varicella vaccine coverage.
- Description of plan for obtaining information on varicella vaccine coverage by age group on an ongoing basis.
- Adequacy of plans for data management and analysis.
- Methodology for conducting population-based surveillance.

*Under objectives 2 and 3:*

- Description of existing capacity to perform applied epidemiological research on varicella, herpes zoster, and/or other viral VPD.
- Methodology for conducting applied epidemiological research on varicella, herpes zoster, and/or other viral VPD.
- Methodology for conducting vaccine effectiveness studies (Objective 2).
- Quality of the proposed applied epidemiological research projects, as requested under the Activities section above, regarding objectives, methodology/design, feasibility, and collaboration and participation with partner organizations like local and state health departments.

*Under Objective 4:*

- Description of existing capacity to perform surveillance for other viral VPD and to assess vaccine impact.
- Adequacy of plan for performing and maintaining other viral VPD surveillance and the extent to which the proposed sources of case report will ensure adequate sample size and representativeness of populations under surveillance.
- Description of plan for obtaining information on vaccine coverage by age group on an ongoing basis.
- Adequacy of plans for data management and analysis.
- Methodology for conducting population-based surveillance.

*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 (if any)?

- Identification of applicant's key professional personnel to be assigned to manage/perform/implement activities under objectives 1–2–3–4 of the program (provide curriculum vitae for each in an appendix). Clear identification of their respective roles and responsibilities as well as management and operational plan.
- Descriptions of their experience in conducting work similar to that proposed in this announcement.
- Description of all support staff and services to be assigned to the different activities under program objectives.
- Proven record/publications of surveillance/research experience of key

investigator(s) (PI and main researchers) on the disease subjects considered under the applicant's response.

*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?

- Operational Plan: The plan should identify the proposed organizational and operating structure/procedures including the roles and responsibilities of all participating agencies, organizations, institutions, and individuals.
- Description of applicant's partnerships with necessary and appropriate organizations for establishing and operating the proposed varicella, herpes zoster, and/or other viral VPD surveillance as well as applied epidemiological research including appropriate public health action in response to outbreaks.
- Ability to function as part of a surveillance network. The extent to which the applicant describes plans for collaboration with other varicella and/or herpes zoster surveillance sites in the establishment and operation of the varicella and/or herpes zoster surveillance, including project design/development (*e.g.*, protocols) and synthesis and dissemination of findings.
- The degree to which the applicant has met 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 community(ies) and recognition of mutual benefits.
- Demonstration of support for non-applicant participating agencies, institutions, organizations, etc. indicated in applicant's operational plan. Applicant should provide (in an appendix) letters of support which clearly indicate collaborators' willingness to be participants in surveillance and applied epidemiological research activities. Do not include letters of support from CDC personnel.

*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 community(ies) and recognition of mutual benefits.

*Budget:* The reasonableness of the proposed budget and the requested period of support in relation to the proposed research. In addition the application will be evaluated on the extent to which the line-item budget is detailed, clearly justified, consistent with the purpose and objectives of the program, and reflects both Federal and non-Federal (*e.g.*, State funding) shares of total cost. If requesting funds for any contracts, provide the following information for each proposed contract: name of proposed contractor, breakdown and justification for estimated costs, description and scope of activities to be performed by contractor, period of performance, and method of contractor selection (*e.g.*, sole-source or competitive solicitation).

Provide a separate detailed budget for each objective you are applying for, with accompanying justification of all operating expenses that is consistent with the stated objectives and planned activities of the project.

### *V.2. Review and Selection Process*

Applications will be reviewed for completeness by the Center for Scientific Review, and for responsiveness by the National Immunization Program. 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 the National Immunization Program 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.
- Programmatic priorities receive a programmatic second level review by the National Immunization Program.

*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 Announcement and Award Dates*

*Announcement Date:* March 2004.
*Award Date:* August 2004.

## 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–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–22 Research Integrity
- AR–23 States and Faith-Based Organizations
- AR–24 Health Insurance Portability and Accountability Act Requirements

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. Semi annual progress report, (use form PHS 2590, OMB Number 0925–0001, rev. 5/2001 as posted on the CDC Web site) no less than 30 days after the end of the first half 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: Dalya Guris, Extramural Project Officer, National Immunization Program, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, MS E–61, Atlanta, GA 30333, Telephone: 404–639–6205, E-mail: *dhm5@cdc.gov.*

For questions about peer review, contact: Beth Gardner, Scientific Review Administrator, National Immunization Program, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, MS E–05, Atlanta, GA 30333, Telephone: 404–639–6101, FAX: 404–639–0108, E-mail: *BGardner@cdc.gov.*

For financial, grants management, or budget assistance, contact: Peaches Brown, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2738, E-mail: *POBrown@cdc.gov.*

**VIII. Other Information**

*http://www.cdc.gov/nip.*

Dated: March 4, 2004.

**Edward Schultz,**

*Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.*

[FR Doc. 04–5330 Filed 3–9–04; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 69 FR 4302–4303, dated January 29, 2004) is amended to reflect the consolidation of administrative functions within the Office of the Director, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, into one single organizational component entitled the Administrative Services and Programs Office.

Section C–B, Organization and Functions, is hereby amended as follows:

Following the title and functional statement for the *Office of the Director (CAJ1),* Office of the Chief Operating Officer (CAJ), insert the following:

*Administrative Services and Programs Office (CAJ12).* (1) Plans, coordinates, and provides administrative and management advice and guidance for the OD; (2) provides and coordinates OD-wide administrative, management, and support services in the areas of personnel, travel, procurement, facility management, and other administrative services; (3) plans, develops, and implements OD-wide policies, procedures, and practices for administrative management, acquisition and assistance mechanisms, including contracts and memoranda of agreement, discretionary and block grants, and cooperative agreements; (4) coordinates OD requirements relating to small purchase procurements, VISA procurements, materiel management, and intra-agency agreements/reimbursable agreements; (5) coordinates facility management issues, problems and changes, physical security issues, and policies regarding telecommunications, office furniture and equipment; (6) maintains liaison with Centers, Institute and Offices, Staff Offices, Staff Service Offices, and OD staff; (7) provides guidance and coordination to the OD Offices on cross-divisional negotiated agreements; (8) facilitates and provides consultation on human resource management issues; (9) advocates the use of information technology to strengthen the communications among the divisions, field staff, and partners; (10) plans, coordinates, and implements training for the OD's Divisions' administrative personnel; (11) provides OD-wide management training to supervisors, managers and team leaders.

Delete the functional statement for the *Office of the Director (CAJ1), Office of the Chief Operating Officer (CAJ),* and insert the following:

(1) Manages and directs the activities and functions of the Office of the Chief Operating Officer; (2) provides guidance and support in the conduct and evaluation of program support, business services, and management activities performed for or by Centers/Institute/Offices; (3) participates in the development of CDC's goals and objectives; (4) advises and assists the Director, CDC, the Chief Operating Officer, and other key officials on all aspects of the mission, activities and functions of the Office of the Chief Operating Officer; (5) resolves and responds to external inquiries of current fiscal year funding expenditures; (6) plans and coordinates facility management issues, problems and changes, and physical security issues; and (7) plans and coordinates the implementation of various federal administrative, statutory, regulatory, and policy requirements.

Delete the functional statement for the *Office of the Director (CAJ31), Facilities Planning and Management Office (CAJ3),* and insert the following:

(1) Plans, directs, and coordinates the functions and activities of the Facilities Planning and Management Office (FPMO); (2) provides leadership and

strategic support to senior managers in the determination of CDC's long term facilities needs; (3) directs the operations of FPMO staff involved in the planning, evaluation, design, construction, and management of facilities and acquisition of property; (4) processes data for management and control systems and develops reports and analyses; and (5) assists and advises senior CDC officials in the development, coordination, direction, and assessment of facilities and real property activities throughout CDC's facilities and operations, and assures consideration of facilities management implications in program decisions.

Delete the functional statement for the *Administrative and Program Services Activity (CAJ512), Office of the Director (CAJ51), Information Resources Management Office (CAJ5)* and insert the following:

(1) Provides assistance in formulating, developing, negotiating, managing, and administering various Information Resources Management Office and CDC-wide technology and service contracts; (2) maintains liaison with the staffs of other offices within the Office of the Chief Operating Officer and the administrative offices of the CIOs.

Delete the functional statement for the *Office of the Director (CA11), Office of Health and Safety (CA1)* and insert the following:

(1) Provides leadership in developing and implementing the CDC Health and Safety Program (HSP); (2) coordinates the systematic inspection of facilities and critical review and evaluation of procedures and practices in relation to health and safety; provides recommendations for correction of inappropriate or unsafe conditions to appropriate management officials and monitors for compliance, taking appropriate action when necessary to ensure satisfactory remediation; (3) develops or ensures development of health and safety policies, rules, and recommendations, and critically reviews those from other CDC programs and locations; (4) serves as Executive Secretary of the Health and Safety Advisory Board and the Occupational Health and Safety Committee; (5) advises the Associate Director for Science and the Director, CDC, on health and safety related issues; (6) collects and analyzes health and safety data essential to the planning, implementation, and evaluation of the HSP; (7) takes the lead in developing and implementing safety awareness and health promotion programs for workers, supervisors, and management officials; (8) coordinates the review of plans and specifications of new construction and renovations for biosafety and biocontainment requirements, for asbestos management, and for compliance with applicable standards and codes; (9) provides oversight for the Employee Health Services Clinic in Atlanta which provides a program of medical surveillance, preventative occupational medical services, and health promotion; ensures confidentiality of employee health records to the extent legally possible; (10) ensures that OHS provides expertise to local safety committees and collateral duty safety officers and provides assistance when requested; (11) provides for risk assessments not provided by the Branches; (12) provides consultation and direct support to workers, supervisors, and management officials on all aspects of the HSP; (13) makes available specialized training and/or training materials relative to health and safety; (14) ensures the regular critical review and updating of health and safety related publications including *Biosafety in Microbiological and Biomedical Laboratories;* (15) ensures the drafting, publication, and subsequent regular review and evaluation of a comprehensive Health and Safety Manual; (16) coordinates the development and maintenance of appropriate emergency plans and ensures that they are communicated to all concerned employees; (17) maintains liaison with appropriate Department and Agency officials on health and safety matters; (18) consults with individuals and organizations nationally and internationally on health and safety issues; (19) coordinates activities relative to the implementation of National Environmental Protection Agency (NEPA) for CDC activities and facilities.

Delete the functional statement for the *Resource Management Activity (CA113), Office of the Director (CA11), Office of Health and Safety (CA1)* and insert the following:

(1) Manages OHS centralized computer databases and internal applications; (2) develops and coordinates the implementation of security programs; (3) designs, implements, and evaluates OHS communication strategies including marketing messages, materials, and methods; (4) provides oversight for the Employee Health Services Clinic and the Worksite Health Promotion Programs for employees in the Atlanta area and for the Employee Assistance Program for employees based in Atlanta and remote locations.

Dated: March 2, 2004.

**William H. Gimson,**

*Chief Operating Officer, Centers for Disease Control and Prevention.*

[FR Doc. 04–5317 Filed 3–9–04; 8:45 am]

BILLING CODE 4160–18–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 2002N–0204]**

### Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; "Bar Code Label Requirements for Human Drug Products and Biological Products"

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Bar Code Label Requirements for Human Drug Products and Biological Products" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

**FOR FURTHER INFORMATION CONTACT:** JonnaLynn P. Capezzuto, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of February 26, 2004 (69 FR 9120), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0537. The approval expires on February 28, 2007. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets.*

Dated: March 5, 2004.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 04–5406 Filed 3–9–04; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Allergenic Products 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*: Allergenic Products 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 via teleconference on April 2, 2004, from 1 p.m. to 3:40 p.m.

*Location*: Food and Drug Administration, Bldg. 29B, Conference Rooms A & B, 8800 Rockville Pike, Bethesda, MD. This meeting will be held by teleconference. The public is welcome to attend the meeting at the above location. A speaker phone will be provided at the specified location for public participation in this meeting.

*Contact Person*: William Freas or Jane Brown, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512388. Please call the Information Line for up-to-date information on this meeting.

*Agenda*: On April 2, 2004, the committee will hear updates on the following topics: Personnel organization, research and regulatory work of the Laboratory of Immunobiochemistry in the Division of Bacterial, Parasitic and Allergenic Products, Center for Biologics and an update on FDA activities relating to cockroach standardization. The committee will then discuss use of microarray technology in allergen standardization.

*Procedure*: On April 2, 2004, from 1 p.m. to 3:40 p.m., the meeting is open to the public. 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 March 25, 2004. Oral presentations from the public will be scheduled between approximately 2:40 p.m. and 3:40 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before March 29, 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 William Freas or Jane Brown 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: March 4, 2004.

**William K. Hubbard,**

*Associate Commissioner for Policy and Planning.*

[FR Doc. 04–5405 Filed 3–9–04; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

**Proposed Project: Data System for Organ Procurement and Transplantation Network and Associated Forms (OMB No. 0915–0157)—Revision**

Section 372 of the Public Health Service (PHS) Act requires that the Secretary, by contract, provide for the establishment and operation of an Organ Procurement and Transplantation Network (OPTN). The OPTN, among other responsibilities, operates and maintains a national waiting list of individuals requiring organ transplants, maintains a computerized system for matching donor organs with transplant candidates on the waiting list, and operates a 24-hour telephone service to facilitate matching organs with individuals included in the list.

Data for the OPTN data system are collected from transplant hospitals, organ procurement organizations, and tissue-typing laboratories. The information is used to match donor organs with recipients, to monitor compliance of member organizations with OPTN rules and requirements, and to report periodically on the clinical and scientific status of organ donation and transplantation in this country. Data are used in the development and revision of OPTN rules and requirements, operating procedures, and standards of quality for organ acquisition and preservation, some of which have provided the foundation for development of Federal regulations. The practical utility of the data collection is further enhanced by requirements that the OPTN data must be made available without restriction for use by OPTN members, the Scientific Registry of Transplant Recipients, the Department of Health and Human Services, and others for evaluation, research, patient information, and other important purposes.

Revisions in the 28 data collection forms are intended to clarify existing questions, to provide additional detail and categories to avoid confusion and be more inclusive, to remove obsolete data, and to comply with requests for more complete and precise data.

ESTIMATES OF ANNUALIZED HOUR BURDEN

| Worksheet | Number of respondents | Responses per respondent | Total responses | Hours per response | Total burden hours |
|---|---|---|---|---|---|
| Deceased Donor Registration | 59 | 173 | 10,207 | 0.3 | 3,062.10 |

ESTIMATES OF ANNUALIZED HOUR BURDEN—Continued

| Worksheet | Number of respondents | Responses per respondent | Total responses | Hours per response | Total burden hours |
|---|---|---|---|---|---|
| Death referral data | 59 | 12 | 708 | 10 | 7,080.00 |
| Living Donor Registration | 692 | 10 | 6,920 | 0.2 | 1,384.00 |
| Living Donor Follow-up | 692 | 19 | 13,148 | 0.1 | 1,314.80 |
| Donor Histocompatibility | 152 | 87 | 13,224 | 0.1 | 1,322.40 |
| Recipient Histocompatibility | 152 | 163 | 24,776 | 0.1 | 2,477.60 |
| Heart Candidate Registration | 139 | 23 | 3,197 | 0.3 | 959.10 |
| Lung Candidate Registration | 70 | 28 | 1,960 | 0.3 | 588.00 |
| Heart/Lung Candidate Registration | 72 | 1 | 72 | 0.3 | 21.60 |
| Thoracic Registration | 139 | 24 | 3,336 | 0.3 | 1,000.80 |
| Thoracic Follow-up | 139 | 174 | 24,186 | 0.2 | 4,837.20 |
| Kidney Candidate Registration | 247 | 109 | 26,923 | 0.2 | 5,384.60 |
| Kidney Registration | 247 | 65 | 16,055 | 0.3 | 4,816.50 |
| Kidney Follow-up* | 247 | 493 | 121,771 | 0.2 | 24,354.20 |
| Liver Candidate Registration | 123 | 82 | 10,086 | 0.2 | 2,017.20 |
| Liver Registration | 123 | 46 | 5,658 | 0.4 | 2,263.20 |
| Liver Follow-up | 123 | 299 | 36,777 | 0.3 | 11,033.10 |
| Kidney/Pancreas Candidate Registration | 139 | 12 | 1,668 | 0.2 | 333.60 |
| Kidney/Pancreas Registration | 139 | 7 | 973 | 0.4 | 389.20 |
| Kidney/Pancreas Follow-up | 139 | 64 | 8,896 | 0.3 | 2,668.80 |
| Pancreas Candidate Registration | 139 | 7 | 973 | 0.2 | 194.60 |
| Pancreas Registration | 139 | 4 | 556 | 0.3 | 166.80 |
| Pancreas Follow-up | 139 | 20 | 2,780 | 0.2 | 556.00 |
| Intestine Candidate Registration | 44 | 5 | 220 | 0.2 | 44.00 |
| Intestine Registration | 44 | 3 | 132 | 0.2 | 26.40 |
| Intestine Follow-up | 44 | 8 | 352 | 0.2 | 70.40 |
| Immunosuppression Treatment | 692 | 38 | 26,296 | 0.025 | 657.40 |
| Immunosuppression Treatment Follow-up | 692 | 281 | 194,452 | 0.025 | 4,861.30 |
| Post Transplant Malignancy | 692 | 5 | 3,460 | 0.05 | 173.00 |
| Total | 903 | | 559,762 | | 84,057.90 |

* Includes an estimated 6,000 kidney transplant patients transplanted prior to the initiation of the data system.

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Desk Officer, Health Resources and Services Administration, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC.

Dated: March 3, 2004.

**Tina M. Cheatham,**

*Director, Division of Policy Review and Coordination.*

[FR Doc. 04–5304 Filed 3–9–04; 8:45 am]

BILLING CODE 4165–15–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Amendment to a Notice of Availability of Funds Announced In the HRSA Preview—Primary Health Care Programs: Community and Migrant Health Centers; CFDA Number 93.224; HRSA–04–030

**AGENCY:** Health Resources and Services Administration, HHS.

**ACTION:** Amendment to a notice of availability of funds.

**SUMMARY:** A notice of availability of funds announced in the HRSA Preview, "Primary Health Care Programs: Community and Migrant Health Centers HRSA–04–030," was published in the **Federal Register** on September 4, 2003 (Volume 68, Number 171), FR Doc. 03–22427. On page 52651, under announcement HRSA–04–030, the due date for the Danville, Virginia, service area is extended to May 3, 2004. There are no other changes.

**FOR FURTHER INFORMATION CONTACT:** Jack Egan, HRSA/Bureau of Primary Health Care; *jegan@hrsa.gov.*

**SUPPLEMENTARY INFORMATION:** Program Information Notice 2004–01, "Fiscal Year 2004 Application Instructions for Service Area Competition Funding for the Consolidated Health Center Program," and application guidance is available at the Bureau of Primary Health Care Web page: *http://www.bphc.hrsa.gov/pinspals/.*

Dated: March 2, 2004.

**Elizabeth M. Duke,**

*Administrator.*

[FR Doc. 04–5303 Filed 3–9–04; 8:45 am]

BILLING CODE 4165–15–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Indian Health Service

### National Indian Health Board

**AGENCY:** Indian Health Service, HHS.

**ACTION:** Notice of single source cooperative agreement with the National Indian Health Board.

**SUMMARY:** The Indian Health Service (IHS) announces a new award of a cooperative agreement to the National Indian Health Board (NIHB) for costs in providing advice and technical assistance to the IHS on behalf of federally recognized tribes in the area of health care policy analysis and program development. The NIHB will provide advice, consultation and health care advocacy to the IHS based on tribal input through a broad-based consumer network involving the Area Health Boards or Health Board representatives from each of the twelve IHS Areas. Under the cooperative agreement the NIHB will communicate with tribes and tribal organizations concerning health issues, disseminate health care information, improve and expand access for American Indians and Alaska

Natives (AI/AN) tribal governments to all available programs in the Department of Health and Human Services (HHS), and coordinate the tribal consultation activities associated with formulation of the IHS annual budget request. The application is for a five year project which will commence with an initial award on March 15, 2004. The initial budget period will be awarded at $227,00.00 and the entire project is expected to be awarded at $1,135,000.00.

The award is issued under the authority of the Public Health Service Act, section 301(a) and is included under the Catalog of Federal Domestic Assistance number 93.933. The specific objectives of the project are to:

1. Provide ongoing technical advice and consultation as the national Indian organization that is representative of all tribal governments in the area of health care policy analysis and program development.

2. Assure that health care advocacy is based on tribal input through a broad-based consumer network involving the Area Indian Health Boards or Health Board Representatives from each of the 12 IHS Areas.

3. Establish relationships with other national Indian organizations, with professional groups and with Federal, State and local entities to serve as advocates for AI/AN health programs. As a recipient of a grant/cooperative agreement, the NIHB is prohibited from conducting lobbying activities using Federal funding.

4. Improve and expand access for AI/AN tribal governments to all available programs in the HHS.

5. Publish, at least three times a year, a newsletter featuring articles on health promotion/disease prevention activities and models of best or improving practices, health policy and funding information relevant to AI/AN, *etc.*

6. Disseminate timely health care information to tribal governments, AI/AN Health Boards, other national Indian organizations, professional groups, Federal, State, and local entities.

7. Coordinate the tribal consultation activities associated with formulation of the IHS annual budget request.

*Justification for Single Source:* This project has been awarded on a non-competitive single source basis. NIHB is the only national AI/AN organization with health expertise that represents the interest of all federally recognized tribes.

*Use of Cooperative Agreement:* A non-competitive single source Cooperative Agreement Award will involve:

1. IHS staff will review articles concerning the Agency for accuracy and may, as requested by the NIHB, provide articles.

2. IHS staff will have aproval over the hiring of key personnel as defined by regulation or provision in the cooperative agreement.

3. IHS will provide technical assistance to the NIHB as requested and attend and participate in all NIHB Board meetings.

**FOR FURTHER INFORAMTION CONTACT:** Douglas Black, Director, Office of Tribal Programs, Office of the Director, Indian Health Service, 801 Thompson Avenue, Reyes Building, Suite 220, Rockville, Maryland 20852, telephone (301) 443–1104. For grants information, contact Sylvia Tyan, Grants Management Specialist, Division of Acquisition and Grants Management Branch, 1200 Twinbrook Parkway, Room 450A, Rockville, Maryland 20852, telephone (301) 443–5204.

Dated: March 1, 2004.

**Charles W. Grim,**

*Assistant Surgeon General, Director, Indian Health Service.*

[FR Doc. 04–5305 Filed 3–9–04; 8:45 am]

BILLING CODE 4160–16–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Office of the Director; Notice of Meeting

The Office of the Director, National Institutes of Health (NIH), announces a meeting of the NIH Blue Ribbon Panel on Conflict of Interest Policies, a working group of the Advisory Committee to the director, NIH. The meeting is scheduled for March 12–13, 2004. The meeting will be held at the NIH, 9000 Rockville Pike, Bethesda, Maryland, Building 31C, Conference Room 6. Attendance will be limited to space available. 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 shop a photo I.D. and sign in at the security desk upon entering the building.

On March 12, the Panel will meet in closed, Executive Session, from 8:30–10 a.m., and in public session, from 10 a.m.–6:15 p.m. On March 13, the Panel will meet in closed, Executive Session, from 8:30 a.m.–2 p.m. The agenda will be posted on the NIH Web site *(http://www.nih.gov)* prior to the meeting.

During the public session, time will be set aside for oral presentations by the public. Any person wishing to take a presentation should notify Charlene French, Office of Science Policy, National Institutes of Health, Building 1, Room 103, Bethesda, Maryland 20892, telephone (301) 496–2122 by March 11, 2004 or by e-mail: *blueribbonpanel@mail.nih.gov.*

Oral comments will be limited to 5 minutes. Due to time constraints, only one representative from each organization will be allotted time for oral testimony. The number of speakers and the time allotment may also be limited by the number of presentations. The opportunity to speak will be based on a first come first served basis. All requests to present oral comments should include the name, addresses, telephone number, and business or professional affiliation of the interested party, and should indicate the areas of interest or issue to be addressed. Please provide, if possible, an electronic copy of your comments.

Any person attending the meeting who has not registered to speak in advance of the meeting will be allowed to make a brief oral statement during the time set aside for public comment, if time permits and at the discretion of the co-chairs.

Individuals who plan to attend the meeting and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify Charlene French at the address listed earlier in this notice in advance of the meeting.

Dated: March 5, 2004.

**LaVerne Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 04–5504 Filed 3–8–04; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Public Health Service

### National Institute of Environmental Health Sciences (NIEHS); National Toxicology Program (NTP); Notice of the Availability of Agency Responses to ICCVAM Test Recommendations for the Revised Up-and-Down Procedure for Determining Acute Oral Toxicity and In Vitro Methods for Assessing Acute Systemic Toxicity

**Summary**

The National Toxicology Program Interagency Center for the Evaluation of Alternative Toxicological Methods (NICEATM) announces the availability of Federal agency responses to Interagency Coordinating Committee on the Validation of Alternative Methods

(ICCVAM) test recommendations for: (1) The revised Up-and-Down Procedure (UDP) for determining acute oral toxicity and (2) *in vitro* methods for assessing acute systemic toxicity. Pursuant to sections 3 of the ICCVAM Authorization Act of 2000 [Pub. L. 106–545 (42 U.S.C. 285l–4)], ICCVAM is required to make final ICCVAM test recommendations and the responses from agencies regarding such recommendations available to the public.

**Availability of Agency Responses**

The agency responses to the ICCVAM test recommendations and other current information relevant to these test recommendations are available electronically (PDF and HTML formats) on the NICEATM/ICCVAM Web site at *http://iccvam.niehs.nih.gov*. Hard copy versions of these responses can be requested by contacting NICEATM at P.O. Box 12233, MD EC–17, Research Triangle Park, NC 27709 (mail), 919–541–2384 (telephone), 919–541–0947 (fax), or *niceatm@niehs.nih.gov*.

In summary, the Federal agencies agreed that the UDP had been adequately validated as a replacement for the conventional LD50 test and indicated to the extent applicable, that they will encourage the use of *in vitro* tests for determining starting doses for acute systemic toxicity testing.

**ICCVAM Recommmendations**

NICEATM announced availability of the ICCVAM recommendations for the UDP on February 7, 2002 (**Federal Register** Vol. 67, No. 26, pages 5842–5844). ICCVAM recommends based upon the report, *The Revised Up-and-Down Procedure: A Test Method for Determining the Acute Oral Toxicity of Chemicals; Results of an Independent Peer Review Evaluation Organized by the ICCVAM and NICEATM*, NIH Publication No. 02–4501, that the UDP be used instead of the conventional LD50 test to determine the acute oral toxicity hazard of chemicals for hazard classification and labeling purposes.

NICEATM announced availability of the ICCVAM recommendations for the *in vitro* methods for assessing acute systemic toxicity on September 28, 2001 (**Federal Register** Vol. 66, No. 189, pages 49686–49687). ICCVAM recommends based upon the reports, *Report of the International Workshop on In Vitro Methods for Assessing Acute Systemic Toxicity*, NIH Publication No. 01–4499, and the *Guidance Document on Using In Vitro Data to Estimate In Vivo Starting Doses for Acute Toxicity*, NIH Publication No. 01–4500, that the *in vitro* methods be considered as a tool for estimating starting doses for animal tests of acute systemic toxicity.

**Background Information on ICCVAM and NICEATM**

The NIEHS established the ICCVAM in 1997 to coordinate the interagency technical review of new, revised, and alternative test methods of interagency interest, and to coordinate cross-agency issues relating to the validation, acceptance, and national/international harmonization of toxicological testing methods. ICCVAM was established as a permanent interagency committee of the NIEHS under the NICEATM on December 19, 2000, by the ICCVAM Authorization Act of 2000 (Pub. L. 106–545, available at *http://iccvam.niehs.nih.gov/about/PL106545.pdf*). The Committee is composed of representatives from fifteen Federal regulatory and research agencies that use or generate toxicological information. ICCVAM promotes the scientific validation and regulatory acceptance of toxicological test methods that will improve agencies' ability to accurately assess the safety or hazards of chemicals and various types of products, while refining (less pain and distress), reducing, and replacing animal use wherever possible. NICEATM administers the ICCVAM and provides scientific and operational support for ICCVAM and ICCVAM-related activities. NICEATM and ICCVAM work collaboratively to evaluate new and improved test methods applicable to the needs of Federal agencies. Additional information about ICCVAM and NICEATM can be found at the following Web site: *http://iccvam.niehs.nih.gov*.

Dated: March 2, 2004.

**Samuel H. Wilson,**

*Deputy Director, National Institute of Environmental Health Sciences.*

[FR Doc. 04–5321 Filed 3–9–04; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

**[USCG–2000–7848]**

### Inland Tank Barge Certificates of Inspection; Administrative Changes

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of results.

**SUMMARY:** The Coast Guard commissioned a one-year tank barge Certificate of Inspection (COI) pilot program to test administrative changes to inland tank barge COIs. Under the old Marine Safety Information System, a regulatory change would have been required had any changes been made to the COIs. Use of the new Marine Information for Safety and Law Enforcement information system allows easy access to the COIs; therefore no change in the regulations is needed.

**DATES:** No further actions are planned.

**FOR FURTHER INFORMATION CONTACT:** For questions on this Notice, contact Commander Robert Hennessy, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001, telephone: 202–267–0103, facsimile: 202–267–4570, e-mail: *RHennessy@comdt.uscg.mil* or Lieutenant Raymond Lechner, U.S. Coast Guard Marine Safety Center, 400 7th Street, SW., Washington, DC 20590, telephone: 202–366–6462, e-mail: *RLechner@msc.uscg.mil*.

**SUPPLEMENTARY INFORMATION:** A pilot program was initiated to evaluate a Chemical Transportation Advisory Committee (CTAC) recommendation. The pilot program assessed the benefits of shifting the vessel cargo authority and conditions of carriage information from one required document (the vessel's Certificate of Inspection (COI)) to another required document (the vessel's cargo transfer procedures). Background information about the pilot program conducted by the Marine Safety Office, New Orleans, LA, in cooperation with the Marine Safety Center, American Commercial Barge Lines, and the Petroleum Services Corporation, can be found in the August 31, 2000, **Federal Register** Notice (65 FR 53071).

Since the pilot program was initiated, the Coast Guard now has the Marine Information for Safety and Law Enforcement (MISLE) information system in use. MISLE allows for a different presentation of cargo information than the old Marine Safety Information System. A Certificate of Inspection for inland tank barges and a newly developed Cargo Authority Attachment are now easily accessible from the MISLE; therefore, no changes in the regulations are required. Additional information can be found on the Marine Safety Center's Web site: *http://www.uscg.mil/hq/msc/T2.misle.htm* under "T2: Tank Vessel Cargo and Vapor Control Authority Under MISLE."

Dated: February 27, 2004.

**Joseph J. Angelo,**

*Director of Standards, Marine Safety, Security and Environmental Protection.*

[FR Doc. 04–5300 Filed 3–9–04; 8:45 am]

**BILLING CODE 4910–15–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4907–N–5]**

### Notice of Proposed Information Collection: Comment Request; Mortgagee's Application for Partial Settlement, Multifamily Mortgage

**AGENCY:** Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** *Comments Due Date:* May 10, 2004.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410 or *Wayne_Eddins@hud.gov.*

**FOR FURTHER INFORMATION CONTACT:** Betty Belin, Accountant, Office of Financial Services, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 401–2168 (this is not a toll free number) for copies of the proposed forms and other available information.

**SUPPLEMENTARY INFORMATION:** The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

*Title of Proposal:* Mortgagee's Application for Partial Settlement, Multifamily Mortgage.

*OMB Control Number, if applicable:* 2505–0427.

*Description of the need for the information and proposed use:* When a mortgage goes into default, the lender, may elect to file with the Department a claim for insurance benefits. 12 U.S.C. 1713(g) and title II, section 207(g) of the National Housing Act provides that, the "mortgagee shall be entitled to receive the benefits of the insurance as hereinafter provided, upon assignment, transfer, and delivery to the Secretary, within a period and in accordance with rules and regulations to be prescribed by the Secretary of all rights and interest arising under the mortgage in default: * * * at its option and in accordance with regulation, and in a period to be determined by the Secretary, proceed to foreclosure on and obtain possession of or other wise acquire such property after default and receive the benefits of the insurance as herein provided upon prompt conveyance to the Secretary the title of the property * * *" Within 24 to 48 hours after an assignment or conveyance, the Secretary may pay to the mortgagee a partial amount of insurance benefits. This payment is made prior to the mortgagee filing the claim for insurance benefits. The information collected on the subject form, HUD–2537 (Mortgagee's Application for Partial Settlement-Multifamily Mortgage) provides the required data to determine the partial amount. The partial amount is computed in accordance with foregoing statutory provisions and regulations promulgated there under in 24 CFR 207(B), Contract rights and Obligations.

*Agency form numbers, if applicable:* HUD–2537.

*Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:* The estimated number of respondents is 215, frequency of responses is one per claim submission, with an estimated time of 15 minutes to complete. Therefore, the total annual burden hours requested is 54.

*Status of the proposed information collection:* Reinstatement, without change, of previously approved collection for which approval has expired.

**Authority:** The Paperwork Reduction Act of 1995, 44 U.S.C., chapter 35, as amended.

Dated: March 1, 2004.

**Sean G. Cassidy,**

*General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.*

[FR Doc. 04–5309 Filed 3–9–04; 8:45 am]

**BILLING CODE 4210–27–M**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4907–N–7]**

### Notice of Proposed Information Collection: Comment Request; Application for Insurance of Advance of Mortgage Proceeds

**AGENCY:** Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** *Comments Due Date:* May 10, 2004.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8001, Washington, DC 20410.

**FOR FURTHER INFORMATION CONTACT:** Michael McCullough, Director, Office of Multifamily Development, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–1142, extension 5426 (this is not a toll-free number) for copies of the proposed forms and other available information.

**SUPPLEMENTARY INFORMATION:** The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have

practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

*Title of Proposal:* Application for Insurance of Advance of Mortgage Proceeds.

*OMB Control Number, if applicable:* 2502–0097.

*Description of the need for the information and proposed use:* HUD92403: Application for Insurance of Advance of Mortgage Proceeds, is used by mortgagors to request the advance of mortgage proceeds to reimburse the mortgagor for funds expended or obligated for construction related items; by mortgagee to request mortgage insurance for funds so advanced and by HUD as its certificate for mortgage insurance for funds it approves for advance.

*Agency form numbers, if applicable:* Form HUD–92403.

*Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:*

*Status of the proposed information collection:* Reinstatement, without change, of previously approved collection for which approval has expired.

**Authority:** The Paperwork Reduction Act of 1995, 44 U.S.C., chapter 35, as amended.

Dated: March 2, 2004.

**Sean G. Cassidy,**

*General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.*

[FR Doc. 04–5310 Filed 3–9–04; 8:45 am]

**BILLING CODE 4210–27–M**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4907–N–6]**

### Notice of Proposed Information Collection: Comment Request; Rehabilitation Mortgage Insurance Underwriting Program Section 203(K)

**AGENCY:** Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** *Comments Due Date:* May 10, 2004.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410 or *Wayne_Eddins@hud.gov.*

**FOR FURTHER INFORMATION CONTACT:** Dick Bradley, Office of Single Family Development, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–6396 extension 2326 (this is not a toll free number) for copies of the proposed forms and other available information.

**SUPPLEMENTARY INFORMATION:** The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

*Title of Proposal:* Rehabilitation Mortgage Insurance Underwriting Program Section 203(k).

*OMB Control Number, if applicable:* 2502–0527.

*Description of the need for the information and proposed use:* The information collected implements recommendations to mitigate program abuses that were cited in an Audit Report of HUD's Office of Inspector General. The information collection focuses on the loan origination process and requires (1) certifications and disclosures concerning identity-of-interest borrowers and program participants, and (2) proficiency testing of home inspectors/consultants. Periodic reporting of the collected information is not required.

*Agency form numbers, if applicable:* HUD–92700, HUD–9746–A

*Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:* The estimated number of burden hours needed to prepare the information collection is 319,450, the number of respondents is 259,200 generating approximately 259,200 annual responses; the frequency of response is on occasion; and the estimated time needed to prepare the response varies from .1 hours to 36 hours.

*Status of the proposed information collection:* Reinstatement, without change, of previously approved collection for which approval has expired.

**Authority:** The Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: March 2, 2004.

**Sean G. Cassidy,**

*General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.*

[FR Doc. 04–5311 Filed 3–9–04; 8:45 am]

**BILLING CODE 4210–27–M**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4903–N–10]**

### Notice of Submission of Proposed Information Collection to OMB: Monthly Accounting Reports

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This submission is a request to reinstate approval to collect information necessary to assess the need for remedial actions to correct project deficiencies or head off potential default

of a project mortgage. HUD monitors compliance with contractual agreements analyzes cash flow trends as well as occupancy and rent collection levels.

**DATES:** *Comments Due Date:* April 9, 2004.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0108) should be sent to: HUD Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Melanie_Kadlic@omb.eop.gov.*

**FOR FURTHER INFORMATION CONTACT:** Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the contact information of an agency official familiar with the proposal and the OMB Desk Officer for the Department.

This Notice also lists the following information:

*Title of Proposal:* Monthly Accounting Reports.

*OMB Approval Number:* 2502–0108.

*Form Numbers:* HUD–93479, HUD–93480, HUD–93481.

*Description of the Need for the Information and its Proposed Use:* This submission is a request to reinstate approval to collect information necessary to assess the need for remedial actions to correct project deficiencies or head off potential default of a project mortgage. HUD monitors compliance with contractual agreements analyzes cash flow trends as well as occupancy and rent collection levels.

*Respondents:* Business or other for-profit and Not-for-profit institutions.

*Frequency of Submission:* Monthly.

| | Number of respondents | × | Annual responses | × | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| Reporting Burden | 4,000 | | 12 | | 3.5 | | 168,000 |

*Total Estimated Burden Hours:* 168,000.

*Status:* Reinstatement, without change, of previously approved collection.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: March 3, 2004.

**Wayne Eddins,**

*Departmental Reports Management Officer, Office of the Chief Information Officer.*

[FR Doc. 04–5315 Filed 3–9–04; 8:45 am]

BILLING CODE 4210–72–P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4513–N–15]**

### Credit Watch Termination Initiative

**AGENCY:** Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

**ACTION:** Notice.

**SUMMARY:** This notice advises of the cause and effect of termination of Origination Approval Agreements taken by the HUD's Federal Housing Administration (FHA) against HUD-approved mortgagees through the FHA Credit Watch Termination Initiative. This notice includes a list of mortgagees which have had their Origination Approval Agreements terminated.

**FOR FURTHER INFORMATION CONTACT:** The Quality Assurance Division, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room B133–P3214, Washington, DC 20410–8000; telephone (202) 708–2830 (this is not a toll free number). Persons with hearing or speech impairments may access that number through TTY by calling the Federal Information Relay Service at (800) 877–8339.

**SUPPLEMENTARY INFORMATION:** HUD has the authority to address deficiencies in the performance of lenders' loans as provided in HUD's mortgagee approval regulations at 24 CFR 202.3. On May 17, 1999 (64 FR 26769), HUD published a notice on its procedures for terminating Origination Approval Agreements with FHA lenders and placement of FHA lenders on Credit Watch status (an evaluation period). In the May 17, 1999 notice, HUD advised that it would publish in the **Federal Register** a list of mortgagees, which have had their Origination Approval Agreements terminated.

*Termination of Origination Approval Agreement:* Approval of a mortgagee by HUD/FHA to participate in FHA mortgage insurance programs includes an Origination Approval Agreement (Agreement) between HUD and the mortgagee. Under the Agreement, the mortgagee is authorized to originate single family mortgage loans and submit them to FHA for insurance endorsement. The Agreement may be terminated on the basis of poor performance of FHA-insured mortgage loans originated by the mortgagee. The termination of a mortgagee's Agreement is separate and apart from any action taken by HUD's Mortgagee Review Board under HUD's regulations at 24 CFR part 25.

*Cause:* HUD's regulations permit HUD to terminate the Agreement with any mortgagee having a default and claim rate for loans endorsed within the preceding 24 months that exceeds 200 percent of the default and claim rate within the geographic area served by a HUD field office, and also exceeds the national default and claim rate. For the 17th review period, HUD is only terminating the Agreement of mortgagees whose default and claim rate exceeds both the national rate and 200 percent of the field office rate.

*Effect:* Termination of the Agreement precludes that branch(s) of the mortgagee from originating FHA-insured single family mortgages within the area of the HUD field office(s) listed in this notice. Mortgagees authorized to

purchase, hold, or service FHA insured mortgages may continue to do so.

Loans that closed or were approved before the termination became effective may be submitted for insurance endorsement. Approved loans are (1) those already underwritten and approved by a Direct Endorsement (DE) underwriter employed by an unconditionally approved DE lender and (2) cases covered by a firm commitment issued by HUD. Cases at earlier stages of processing cannot be submitted for insurance by the terminated branch; however, they may be transferred for completion of processing and underwriting to another mortgagee or branch authorized to originate FHA insured mortgages in that area. Mortgagees are obligated to continue to pay existing insurance premiums and meet all other obligations associated with insured mortgages.

A terminated mortgagee may apply for a new Origination Approval Agreement if the mortgagee continues to be an approved mortgagee meeting the requirements of 24 CFR 202.5, 202.6, 202.7, 202.8 or 202.10 and 202.12, if there has been no Origination Approval Agreement for at least six months, and if the Secretary determines that the underlying causes for termination have been remedied. To enable the Secretary to ascertain whether the underlying causes for termination have been remedied, a mortgagee applying for a new Origination Approval Agreement must obtain an independent review of the terminated office's operations as well as its mortgage production, specifically including the FHA-insured mortgages cited in its termination notice. This independent analysis shall identify the underlying cause for the mortgagee's high default and claim rate. The review must be conducted and issued by an independent Certified Public Accountant (CPA) qualified to perform audits under Government Auditing Standards as provided by the General Accounting Office. The mortgagee must also submit a written corrective action plan to address each of the issues identified in the CPA's report, along with evidence that the plan has been implemented. The application for a new Agreement should be in the form of a letter, accompanied by the CPA's report and corrective action plan. The request should be sent to the Director, Office of Lender Activities and Program Compliance, 451 Seventh Street, SW., Room B133–P3214, Washington, DC 20410–8000 or by courier to 490 L'Enfant Plaza, East, SW., Suite 3214, Washington, DC 20024.

*Action:* The following mortgagees have had their Agreements terminated by HUD:

| Mortgagee name | Mortgagee branch address | HUD office jurisdictions | Termination effective date | Home ownership centers |
|---|---|---|---|---|
| American United Mtg Serv | 4230 LBJ Freeway Ste 626 Dallas, TX 75244. | Dallas, TX | 11/29/2003 | Denver |
| American United Mtg Serv | 4230 LBJ Freeway Ste 626 Dallas, TX 75244. | Fort Worth, TX | 11/29/2003 | Denver |
| Approval First Mortgage | 3510 S Florida Ave Ste 102 Lakeland, FL 33803. | Tampa, FL | 12/26/2003 | Atlanta |
| BSM Financial LP | 16479 Dallas Parkway, #211 Addision, TX 75001. | Fort Worth, TX | 12/24/2003 | Denver |
| Community Central Mortgage | 85 North Main St. Ste 301 Mt. Clemens, MI 48083. | Detroit, MI | 12/26/2003 | Philadelphia |
| Enterprise Mortgage | 14200 Northbrook Dr. San Antonio, TX 78232. | San Antonio, TX | 12/24/2003 | Denver |
| Fortune Mortgage | 955 Congress Park Dr. Centerville, OH 45459. | Cincinnati, OH | 12/29/2003 | Philadelphia |
| Home Loan Corporation | 1112 East Copeland Rd. Ste 550, Arlington, TX 76011. | Dallas, TX | 12/24/2003 | Denver |
| Legacy Mortgage | 12800 S Ridgeland Ste G Palos Heights, IL 60463. | Chicago, IL | 12/24/2003 | Atlanta |
| Meier Mortgage | 7035 Bee Caves Road Ste 103 Austin, TX 78746. | San Antonio, TX | 11/29/2003 | Denver |
| Metrociti Mortgage | 4500 California Ave, #204 Bakersfield, CA 93309. | Fresno, CA | 12/12/2003 | Santa Ana |
| New Freedom Mortgage | 5248 So. Pinemont Dr. #C–190 Murray, UT 84123. | Salt Lake City, UT | 12/24/2003 | Denver |
| Pinnacle Financial | 2611 Technology Dr. Orlando, FL 32804 | Tampa, FL | 12/2/2003 | Atlanta |
| Prem Mortgage | 8678 West Spring Mtn Rd, #130, Las Vegas, NV 89117. | Las Vegas, NV | 12/24/2003 | Santa Ana |
| Premiere Service Mortgage | 297 Buttermilk Pike Fort Mitchell, KY 41017 | Cincinnati, OH | 11/29/2003 | Philadelphia |
| Progressive Mortgage | 5400 Transportation Blvd Ste 8 Cleveland, OH 44125. | Cleveland, OH | 12/24/2003 | Philadelphia |
| RBC Mortgage Company | 5801 Allentown Road Camp Springs, MD 20746. | Baltimore, MD | 12/24/2003 | Philadelphia |
| Standard Home Mortgage | 35787 Moravian Dr. Clinton Twp, MI 48035 | Detroit, MI | 12/29/2003 | Philadelphia |
| Sunpoint Corporation | 2400 S. Cimarron Rd. Ste 130 Las Vegas, NV 89117. | Las Vegas, NV | 12/29/2003 | Santa Ana |

Dated: March 5, 2004.

**John C. Weicher,**

*Assistant Secretary for Housing—Federal Housing Commissioner.*

[FR Doc. 04–5396 Filed 3–9–04; 8:45 am]

**BILLING CODE 4210–27–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4917–N–01]**

### Mortgage and Loan Insurance Programs Under the National Housing Act—Debenture Interest Rates

**AGENCY:** Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

**ACTION:** Notice.

**SUMMARY:** This notice announces changes in the interest rates to be paid on debentures issued with respect to a loan or mortgage insured by the Federal Housing Commissioner under the provisions of the National Housing Act (the Act). The interest rate for debentures issued under section 221(g)(4) of the Act during the 6-month period beginning January 1, 2004, is 5¼ percent. The interest rate for debentures issued under any other provision of the Act is the rate in effect on the date that the commitment to insure the loan or mortgage was issued, or the date that the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. The interest rate for debentures issued under these other provisions with respect to a loan or mortgage committed or endorsed during the 6-month period beginning January 1, 2004, is 5⅛ percent. However, as a result of a recent amendment to section 224 of the Act, if an insurance claim relating to a mortgage insured under sections 203 or 234 of the Act and endorsed for insurance after January 23, 2004 is paid cash, the debenture interest rate for purposes of calculating a claim shall be the monthly average yield, for the month in which the default on the mortgage occurred, on United States Treasury Securities adjusted to a constant maturity of 10 years.

**FOR FURTHER INFORMATION CONTACT:** L. Richard Keyser, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 2232, Washington, DC 20410–8000; telephone (202) 755–7500 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:** Section 224 of the National Housing Act (12 U.S.C. 1715o) provides that debentures issued under the Act with respect to an insured loan or mortgage (except for debentures issued pursuant to Section 221(g)(4) of the Act) will bear interest at the rate in effect on the date the commitment to insure the loan or mortgage was issued, or the date the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. This provision is implemented in HUD's regulations at 24 CFR 203.405, 203.479, 207.259(e)(6), and 220.830. These regulatory provisions state that the applicable rates of interest will be published twice each year as a notice in the **Federal Register.**

Section 224 further provides that the interest rate on these debentures will be set from time to time by the Secretary of HUD, with the approval of the Secretary of the Treasury, in an amount not in excess of the annual interest rate determined by the Secretary of the Treasury pursuant to a statutory formula based on the average yield of all outstanding marketable Treasury obligations of maturities of 15 or more years.

The Secretary of the Treasury (1) has determined, in accordance with the provisions of Section 224, that the statutory maximum interest rate for the period beginning January 1, 2004, is 5⅛ percent; and (2) has approved the establishment of the debenture interest rate by the Secretary of HUD at 5⅛ percent for the 6-month period beginning January 1, 2004. This interest rate will be the rate borne by debentures issued with respect to any insured loan or mortgage (except for debentures issued pursuant to Section 221(g)(4)) with insurance commitment or endorsement date (as applicable) within the first 6 months of 2004.

For convenience of reference, HUD is publishing the following chart of debenture interest rates applicable to mortgages committed or endorsed since January 1, 1980:

| Effective interest rate | On or after | Prior to |
|---|---|---|
| 9½ | Jan. 1, 1980 | July 1, 1980. |
| 9⅞ | July 1, 1980 | Jan. 1, 1981. |
| 11¾ | Jan. 1, 1981 | July 1, 1981. |
| 12⅞ | July 1, 1981 | Jan. 1, 1982. |
| 12¾ | Jan. 1, 1982 | Jan. 1, 1983. |
| 10¼ | Jan. 1, 1983 | July 1, 1983. |
| 10⅜ | July 1, 1983 | Jan. 1, 1984. |
| 11½ | Jan. 1, 1984 | July 1, 1984. |
| 13⅜ | July 1, 1984 | Jan. 1, 1985. |
| 11⅝ | Jan. 1, 1985 | July 1, 1985. |
| 11⅛ | July 1, 1985 | Jan. 1, 1986. |
| 10¼ | Jan. 1, 1986 | July 1, 1986. |
| 8¼ | July 1, 1986 | Jan. 1. 1987. |
| 8 | Jan. 1, 1987 | July 1, 1987. |
| 9 | July 1, 1987 | Jan. 1, 1988. |
| 9⅛ | Jan. 1, 1988 | July 1, 1988. |
| 9⅜ | July 1, 1988 | Jan. 1, 1989. |
| 9¼ | Jan. 1, 1989 | July 1, 1989. |
| 9 | July 1, 1989 | Jan. 1, 1990. |
| 8⅛ | Jan. 1, 1990 | July 1, 1990. |
| 9 | July 1, 1990 | Jan. 1, 1991. |
| 8¾ | Jan. 1, 1991 | July 1, 1991. |
| 8½ | July 1, 1991 | Jan. 1, 1992. |
| 8 | Jan. 1, 1992 | July 1, 1992. |
| 8 | July 1, 1992 | Jan. 1, 1993. |
| 7¾ | Jan. 1, 1993 | July 1, 1993. |
| 7 | July 1, 1993 | Jan. 1, 1994. |
| 6⅝ | Jan. 1, 1994 | July 1, 1994. |
| 7¾ | July 1, 1994 | Jan. 1, 1995. |
| 8⅜ | Jan. 1, 1995 | July 1, 1995. |
| 7¼ | July 1, 1995 | Jan. 1, 1996. |
| 6½ | Jan. 1, 1996 | July 1, 1996. |
| 7¼ | July 1, 1996 | Jan. 1, 1997. |
| 6¾ | Jan. 1, 1997 | July 1, 1997. |
| 7⅛ | July 1, 1997 | Jan. 1, 1998. |
| 6⅜ | Jan. 1, 1998 | July 1, 1998. |
| 6⅛ | July 1, 1998 | Jan. 1, 1999. |
| 5½ | Jan. 1, 1999 | July 1, 1999. |
| 6⅛ | July 1, 1999 | Jan. 1, 2000. |
| 6½ | Jan. 1, 2000 | July 1, 2000. |
| 6½ | July 1, 2000 | Jan. 1, 2001. |
| 6 | Jan. 1, 2001 | July 1, 2001. |
| 5⅞ | July 1, 2001 | Jan. 1, 2002. |
| 5¼ | Jan. 1, 2002 | July 1, 2002. |
| 5¾ | July 1, 2002 | Jan. 1, 2003. |
| 5 | Jan. 1, 2003 | July 1, 2003. |
| 4½ | July 1, 2003 | Jan. 1, 2004. |
| 5⅛ | Jan. 1, 2004 | July 1, 2004. |

Section 215 of HUD's 2004 Appropriations Act amended section 224 of the Act, to change the debenture interest rate for purposes of calculating certain insurance claim payments made in cash. Therefore, effective immediately, for all claims paid in cash on mortgages insured under section 203 or 234 of the National Housing Act and endorsed for insurance after January 23, 2004, the debenture interest rate will be the monthly average yield, for the month in which the default on the mortgage occurred, on United States Treasury Securities adjusted to a constant maturity of 10 years, as found in Federal Reserve Statistical Release H–15. The Federal Housing Administration is in the process of making conforming amendments to applicable regulations to fully implement this recent change to section 224 of the Act.

Section 221(g)(4) of the Act provides that debentures issued pursuant to that paragraph (with respect to the assignment of an insured mortgage to the Secretary) will bear interest at the "going Federal rate" in effect at the time the debentures are issued. The term "going Federal rate" is defined to mean the interest rate that the Secretary of the

Treasury determines, pursuant to a statutory formula based on the average yield on all outstanding marketable Treasury obligations of 8-to 12-year maturities, for the 6-month periods of January through June and July through December of each year. Section 221(g)(4) is implemented in the HUD regulations at 24 CFR 221.255 and 24 CFR 221.790.

The Secretary of the Treasury has determined that the interest rate to be borne by debentures issued pursuant to Section 221(g)(4) during the 6-month period beginning January 1, 2004, is 5¼ percent.

HUD expects to publish its next notice of change in debenture interest rates in July 2004.

The subject matter of this notice falls within the categorical exemption from HUD's environmental clearance procedures set forth in 24 CFR 50.19(c)(6). For that reason, no environmental finding has been prepared for this notice.

(Sections 211, 221, 224, National Housing Act, 12 U.S.C. 1715b, 1715*l*, 1715o; Section 7(d), Department of HUD Act, 42 U.S.C. 3535(d))

Dated: March 1, 2004.

**John C. Weicher,**

*Assistant Secretary for Housing-Federal Housing Commissioner.*

[FR Doc. 04–5312 Filed 3–9–04; 8:45 am]

BILLING CODE 4210–27–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Availability of Final Revised Environmental Assessment, Management Plan, and Implementation Guidance, and a Finding of No Significant Impact for Take of Nestling American Peregrine Falcons in the Contiguous United States and Alaska for Use in Falconry

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** This notice is to announce the availability of a Final Revised Environmental Assessment, Management Plan, and Implementation Guidance, and a Finding of No Significant Impact for take of nestling American Peregrine Falcons (*Falco peregrinus anatum*) for use in falconry. We published the Draft Revised Environmental Assessment in April 2003. We considered 945 comments in revising the assessment. After completion of the Final Revised Environmental Assessment, we also produced a Finding of No Significant Impact for the action.

**ADDRESSES:** The documents are available from the Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Mail Stop 4107, Arlington, Virginia 22203–1610. They also are available on the Division of Migratory Bird Management Web pages at *http://migratorybirds.fws.gov*.

**FOR FURTHER INFORMATION CONTACT:** Dr. George T. Allen, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, at 703–358–1714.

**SUPPLEMENTARY INFORMATION:** In the draft Revised Environmental Assessment, Management Plan, and Implementation Guidance (draft Revised EA) we considered six alternatives for take of nestling American peregrine falcons (*Falco peregrinus anatum*) in the western United States and Alaska. We accepted comment on the draft Revised EA for 60 days (68 FR 22727). We received 945 electronic or written comment letters on the draft Revised Environmental Assessment, Management Plan, and Implementation Guidance. Fifteen were from State or Federal agencies; 930 were from individuals and organizations. Thirteen agency responses favored allowing take of nestlings, and two responses were neutral. Of the individual and organization comments received, 6 opposed take of nestlings and 929 supported allowing take. We modified the Draft Revised Environmental Assessment, Management Plan, and Implementation Guidance to respond to concerns expressed by agencies, organizations, and individuals.

Having reviewed the comments on the draft, our proposed action is to allow take of up to 5 percent of the American peregrine falcon nestlings produced in the States west of 100° longitude, at the discretion of each State. We believe that this conservative level of take is appropriate for a species recently removed from the List of Endangered and Threatened Wildlife and Plants, and will have no discernible effect on the American peregrine falcon population in the western United States. Based on this assessment, I have signed a Finding of No Significant Impact for take of nestling American peregrine falcons under the conditions we evaluated.

Dated: March 1, 2004.

**Steve Williams,**

*Director, Fish and Wildlife Service.*

[FR Doc. 04–5306 Filed 3–9–04; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[AZ–930–1430–ET; AZA 8736 et al.]**

### Expiration of Forest Service Withdrawals and Opening of Lands; Arizona

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** Six public land orders, which withdrew 2,644 total acres of National Forest System lands from mining, have expired. This action will open the lands to mining.

**EFFECTIVE DATE:** March 10, 2004.

**FOR FURTHER INFORMATION CONTACT:** Cliff Yardley, BLM Arizona State Office, 222 North Central Avenue, Phoenix, Arizona 85004–2203, 602–417–9437.

**SUPPLEMENTARY INFORMATION:** 1. The following public land orders (PLOs), which withdrew National Forest System lands for the areas listed below, have expired:

| PLO | Serial No. | Area Name | Expired | Acres |
|---|---|---|---|---|
| 5740 | AZA 8736 | Dragoon Spring Stage Station | 7/29/2000 | 10 |
| 5749 | AZA 8684 | Goudy Canyon Research Area | 8/27/2000 | 560 |
| 5751 | AZA 9291 | Elden Environmental Study Area | 8/27/2000 | 778 |
| 5801 | AZA 8985 | Pole Bridge Can. Research Area | 1/6/2001 | 461 |
| 5835 | AZA 9275 | Elgin Research Natural Area | 1/22/2001 | 355 |
| 6217 | AZA 9134 | Bush Highway Research Area | 3/18/2002 | 480 |

2. Copies of the public land orders for the expired withdrawals, showing the lands involved, are available at the BLM Arizona State Office (address above).

3. At 10 a.m. on April 9, 2004, the lands withdrawn by the public land

orders listed above will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (2000), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights because Congress has provided for such determinations in local courts.

Dated: January 21, 2004.

**Michael A. Taylor,**

*Deputy State Director, Resources Division.*

[FR Doc. 04–5354 Filed 3–9–04; 8:45 am]

BILLING CODE 3410–11–P

## DEPARTMENT OF THE INTERIOR

### National Park Service

### National Park System Advisory Board; Meeting

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of meeting.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix, that the National Park System Advisory Board will meet March 24–25, 2004, in the Doyle Ballroom of the Jurys Washington Hotel, 1500 New Hampshire Avenue, NW., Washington, DC. On March 24, the Board will convene at 10 a.m., and adjourn for the day at 1 p.m. The Board will reconvene on March 25 at 8:30 a.m., and adjourn at 4:30 p.m. National Park Service Director Fran Mainella will address the Board on March 24, followed by orientation of new members, and afternoon tour of National Historic Sites. March 25, the Board will receive reports from its committees and consider pending business. National Historic Landmark nominations will be reviewed during the morning session.

Other officials of the National Park Service and the Department of the Interior may address the Board, and other miscellaneous topics and reports may be covered. The order of the agenda may be changed, if necessary, to accommodate travel schedules or for other reasons.

The Board meeting will be open to the public. Space and facilities to accommodate the public are limited and attendees will be accommodated on a first-come basis. Anyone may file with the Board a written statement concerning matters to be discussed. The Board may also permit attendees to address the Board, but may restrict the length of the presentations, as necessary to allow the Board to complete its agenda within the allotted time.

Anyone who wishes further information concerning the meeting, or who wishes to submit a written statement, may contact Mr. Loran Fraser, Chief, Office of Policy and Regulations, National Park Service, 1849 C Street, NW., Washington, DC 20240 (telephone 202–208–7456).

Draft minutes of the meeting will be available for public inspection about 12 weeks after the meeting, in room 2228, Main Interior Building, 1849 C Street, NW., Washington, DC.

Dated: March 2, 2004.

**Loran Fraser,**

*Chief, Office of Policy, National Park Service.*

[FR Doc. 04–5308 Filed 3–9–04; 8:45 am]

BILLING CODE 4310–70–P

## DEPARTMENT OF JUSTICE

### Bureau of Alcohol, Tobacco, Firearms, and Explosives

### Agency Information Collection Activities: Proposed Collection; Comments Requested

**ACTION:** 30-day notice of information collection under review: interstate firearms shipment report of theft/loss.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) 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 68, Number 106, page 33182 on June 3, 2003, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until April 9, 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) 395–7285.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Interstate Firearms Shipment Report of Theft/Loss.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 3310.6. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. *Other:* none. *Abstract:* The form is part of a voluntary program in which the common carrier and/or shipper report losses or thefts of firearms from interstate shipments. ATF uses this information to ensure that the firearms are entered into the National Crime Information Center to initiate investigations and to perfect criminal cases.

(5) *An estimate of the total number of respondents and the amount of time*

*estimated for an average respondent to respond:* There will be an estimated 550 respondents, who will complete the form within approximately 20 minutes.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 182 total burden hours associated with this collection.

*If additional information is required contact:* Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: March 4, 2004.

**Brenda E. Dyer,**

*Deputy Clearance Officer, United States Department of Justice.*

[FR Doc. 04–5336 Filed 3–9–04; 8:45 am]

BILLING CODE 4410–FB–P

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. ICR 1218–0221(2004)]**

### Crawler, Locomotive, and Truck Cranes Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Request for comment.

**SUMMARY:** OSHA solicits comments concerning its proposal to extend OMB approval of the Information Collection requirements contained in the Crawler, Locomotive, and Truck Cranes Standard (29 CFR 1910.180). The purpose of each of these requirements is to prevent employees from using unsafe cranes and ropes, thereby, reducing their risk of death or serious injury caused by a crane or rope failure during material handling.

**DATES:** Comments must be submitted by the following dates:

*Hard Copy:* Your comments must be submitted (postmarked or received) by May 10, 2004.

*Facsimile and electronic transmission:* Your comments must be received by May 10, 2004.

**ADDRESSES:**

**I. Submission of Comment**

*Regular mail, express delivery, hand delivery, and messenger service:* Submit your comments and attachments to the OSHA Docket Office, Docket No. ICR 1218–0221(2004), Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. OSHA Docket Office and Department of Labor hours of operation are 8:15 a.m. to 4:45 p.m., EST.

*Facsimile:* If your comments, including any attachments, are 10 pages or fewer, you may fax them to the OSHA Docket Office at (202) 693–1648. You must include the docket number, ICR 1218–0221(2004), in your comments.

*Electronic:* You may submit comments, but not attachments, through the Internet at *http://ecomments.osha.gov/.*

**II. Obtaining Copies of the Supporting Statement for the Information Collection Request**

The Supporting Statement for the Information Collection Request (ICR) is available for downloading from OSHA's Web site at *http://www.osha.gov.* The complete ICR, containing the OMB Form 83–I, Supporting Statement, and attachments, is available for inspection and copying in the OSHA Docket Office, at the address listed above. A printed copy of the ICR can be obtained by contacting Theda Kenney at (202) 693–2222.

**FOR FURTHER INFORMATION CONTACT:** Theda Kenney, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

**SUPPLEMENTARY INFORMATION:**

**I. Submission of Comments on this Notice and Internet Access to Comments and Submissions**

You may submit comments in response to this document by (1) hard copy, (2) fax transmission (facsimile), or (3) electronically through the OSHA Web page. Please note that you cannot attach materials such as studies or journal articles to electronic comments. If you have additional materials, you must submit three copies of them to the OSHA Docket Office at the address above. The additional materials must clearly identify your electronic comments by name, date, subject and docket number so we can attach them to your receipt comments. Because of security related problems there may be a significant delay in the receipt of comments by regular mail. Please contact the OSHA Docket Office at (202) 693–2350 for information about security procedures concerning the delivery or materials by express delivery, hand delivery and messenger service.

**II. Background**

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.*, employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)).

This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is correct. The Occupational Safety and Health Act of 1970 (the Act) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657).

The Standard specifies several paperwork requirements. The following sections describe who uses the information collected under each requirement, as well as how they use it. The purpose of each of these requirements is to prevent employees from using unsafe cranes and ropes, thereby reducing their risk of death or serious injury caused by a crane or rope failure during material handling.

*(A) Inspection Records (§ 1910.180(d)(6))*

This paragraph specifies that employers must prepare a written record to certify that the monthly inspection or critical items in use on cranes (such as brakes, crane hooks, and ropes) has been performed. The certification record must include the inspection date, the signature of the person who conducted the inspection, and the serial number (or other identifier) of the inspected crane. Employers must keep the certificate readily available. The certification record provides employers, employees, and OSHA compliance officers with assurance that critical items on cranes have been inspected, and that equipment is in good operating condition, so that the crane and rope will not fail during material handling. These records also enable OSHA to determine that an employer is complying with the Standard.

*(B) Rated Load Tests (§ 1910.180(e)(2))*

This provision requires employers to make available written reports of load-rating rests showing test procedures and confirming the adequacy of repairs or alterations, and to make readily available any rerating-test reports. These reports inform the employer, employees,

and OSHA compliance officers of a crane's lifting limitations, and provide information to crane operators to prevent them from exceeding these limits and causing crane failure.

*(C) Rope Inspections (§ 1910.180(g))*

Paragraph (g)(1) requires employers to thoroughly inspect any rope in use at least once a month. The authorized person conducting the inspection must observe any deterioration resulting in appreciable loss of original strength and determine whether or not the condition is hazardous. Before reusing a rope that has not been used for at least a month because the crane housing the rope is shutdown or in storage, paragraph (g)(2)(ii) specifies that employers must have an appointed or authorized person inspect the rope for all types of deterioration. Employers must prepare a certification record for the inspections required by paragraphs (g)(1) and (g)(2)(ii). These certification records must include the inspection date, the signature of the person conducting the inspection, and the identifier for the inspected rope; paragraph (g)(1) states that employers must keep the certificates "on file where readily available," while paragraph (g)(2)(ii) requires that certificates "be * * * kept readily available." The certification records assure employers, employees, and OSHA that the inspected ropes are in good condition.

*(D) Disclosure of Crane and Rope Inspection Certification Records*

The disclosure of certification records provide the most efficient means for OSHA compliance officers to determine that an employer is complying with the Standard.

**III. Special Issues for Comment**

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information-collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and -transmission techniques.

**IV. Proposed Actions**

OSHA is proposing to extend the information collections requirements in the Crawler, Locomotive, and Truck Cranes Standard (29 CFR 1910.180). The Agency will summarize the comments submitted in response to this notice, and will include this summary in its request to OMB to extend the approval of these information collection requirements.

*Type of Review:* Extension of currently approved information collection requirements.

*Title:* Crawler, Locomotive, and Truck Cranes Standard (29 CFR 1910.180).

*OMB Number:* 1918–0221.

*Affected Public:* Business or other for-profit; not-for-profit institutions; Federal government, State, local, or Tribal governments.

*Number of Respondents:* 20,000.

*Frequency of Recordkeeping:* On occasion; Monthly, Semi-annually.

*Average Time per Response:* Varies from 5 minutes (.08 hour) to disclose certification records to 1 hour to conduct rated load tests.

*Total Annual Hours Requested:* 174,062.

**V. Authority and Signature**

John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), and Secretary of Labor's Order No. 5–2002 (67 FR 6508).

Signed at Washington, DC, on March 5th, 2004.

**John L. Henshaw,**

*Assistant Secretary of Labor.*

[FR Doc. 04–5337 Filed 3–9–04; 8:45 am]

BILLING CODE 4510–26–M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice (04–041)]**

### NASA Advisory Council, Biological and Physical Research Advisory Committee, Research Partnership Subcommittee Meeting

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of meeting.

**SUMMARY:** The National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Biological and Physical Research Advisory Committee, Research Partnership Subcommittee (RPS).

**DATES:** Tuesday, April 6, 2004, 9 a.m. to 5 p.m.

**ADDRESSES:** NASA Headquarters, 300 E Street, SW., Room Mic 5A, Washington, DC 20546.

**FOR FURTHER INFORMATION CONTACT:** Dr. Lance Bush, Code US, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–2115.

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public up to the seating capacity of the room. Advance notice of attendance to the Executive Secretary is requested.

The agenda for the meeting will include the following topics:

—Introduction/remarks;
—President's exploration vision;
—Independent review result;
—SPD development plan;
—Subcommittee discussion;
—Wrap-up/recommendations.

Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. Foreign nationals attending this meeting will be required to provide the following information: Full name; gender; date/place of birth; citizenship; visa/green-card information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, phone); title/position of attendee. To expedite admittance, attendees can provide identifying information in advance by contacting Ms. Kim Butler via e-mail at *kbutler@hq.nasa.gov* or by telephone at (202) 358–2560.

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

**Al Condes,**

*Acting Assistant Administrator for External Relations, National Aeronautics and Space Administration.*

[FR Doc. 04–5392 Filed 3–9–04; 8:45 am]

BILLING CODE 7510–01–P

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice (04–042)]**

### NASA Advisory Council, Space Science Advisory Committee; Meeting

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the

NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC).

**DATES:** Thursday, March 25, 2004, 8:30 a.m. to 5 p.m., Friday, March 26, 2004, 8:30 a.m. to 5 p.m.

**ADDRESSES:** Grand Hyatt at Washington Center, 1000 H Street, NW., Washington, DC 20001.

**FOR FURTHER INFORMATION CONTACT:** Ms. Marian R. Norris, Code SB, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–4452.

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

—Associate Administrator's Program Overview Status
—Division Directors' Reports
—Subcommittee Reports and Recommendations
—Explorer Program Solicitation Options
—2006 Strategic Planning Process and Schedule
—Sounding Rockets Status

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors to the meeting will be requested to sign a visitor's register.

**Al Condes,**

*Acting Assistant Administrator for External Relations, National Aeronautics and Space Administration.*

[FR Doc. 04–5393 Filed 3–9–04; 8:45 am]

**BILLING CODE 7510–01–P**

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Records Schedules; Availability and Request for Comments

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Notice of availability of proposed records schedules; request for comments.

**SUMMARY:** The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

**DATES:** Requests for copies must be received in writing on or before April 26, 2004. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

**ADDRESSES:** You may request a copy of any records schedule identified in this notice by contacting the Life Cycle Management Division (NWML) using one of the following means:

*Mail:* NARA (NWML), 8601 Adelphi Road, College Park, MD 20740–6001.

*E-mail: records.mgt@nara.gov.*

*FAX:* 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

**FOR FURTHER INFORMATION CONTACT:** Paul M. Wester, Jr., Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–3120. E-mail: *records.mgt@nara.gov.*

**SUPPLEMENTARY INFORMATION:** Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

**Schedules Pending**

1. Department of Commerce, National Oceanic and Atmospheric Administration (N1–370–03–10, 65 items, 64 temporary items). Records of the National Environmental Satellite, Data, and Information Services, including files relating to such matters as the management of electronic information systems, commercial remote sensing licensing, satellite anomalies, satellite telemetry and trending data, scientific research and development software, and the radio frequency management program. Also included are the data files and records related to earth-based and remotely sensed environmental systems, the records associated with and contained within the customer order processing information system, station metadata information, routine project files and related working files created from the data in environmental systems, and electronic copies of records created using electronic mail and word processing. Proposed for permanent retention (exclusive of supporting materials) are the recordkeeping copies of those paper and electronic products

created as a result of non-routine and special requests.

2. Department of Defense, National Geospatial-Intelligence Agency (N1–537–03–2, 38 items, 32 temporary items). General geospatial program files, source data files, work assignment files, quality assurance files, and user surveys. Also included are electronic copies of documents created using word processing and electronic mail. Proposed for permanent retention are recordkeeping copies of records relating to such matters as studies, requirements, plans, and conferences as well as geospatial publications and products. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

3. Department of Defense, National Geospatial-Intelligence Agency (N1–537–03–6, 9 items, 7 temporary items). Geospatial collection and acquisition files maintained separately from offices assigned functional responsibility. Also included are electronic copies of documents created using word processing and electronic mail. Proposed for permanent retention are recordkeeping copies of geospatial collection and acquisition files maintained by the offices assigned functional responsibility. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

4. Department of Homeland Security, Transportation Security Administration (N1–560–03–11, 7 items, 6 temporary items). Correspondence and training materials accumulated by the Office of Civil Rights. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of files documenting the agency's interactions with the public regarding development of its civil rights policy.

5. Department of Homeland Security, Transportation Security Administration (N1–560–04–2, 16 items, 14 temporary items). Records relating to strategic planning, including working papers, chronological files, correspondence, automation project files, and strategic planning development files. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of all published studies, papers, strategic plans, annual operating plans, assessment reports, organizational studies and charts, and implementation plans.

6. Department of Labor, Office of the Secretary (N1–174–03–1, 12 items, 8 temporary items). Records of the Office of Small Business Programs, including such records as publication background files, copies of speeches, news releases, and directives that are maintained elsewhere in the agency, records relating to support provided tribal and minority educational institutions of higher learning, and records relating to the Small Business Regulatory Enforcement Fairness Act of 1996. Also included are electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of such files as unique program publications, annual reports submitted to the Small Business Administration, and Federal Advisory Committee Act files.

7. Department of Transportation, Federal Aviation Administration (N1–237–03–1, 5 items, 5 temporary items). Docket files relating to legal complaints of unfair treatment brought against Federally-assisted airports by their tenants. Included are complaints, replies, discovery requests, exhibits, transcripts, court orders, and decisions. Also included are electronic copies of records created using electronic mail and word processing. The agency will notify NARA of any docket files that may warrant permanent retention and they will be appraised on a case-by-case basis. This schedule also authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

8. Department of Transportation, Federal Highway Administration (N1–406–04–1, 4 items, 3 temporary items). Internal notices transmitting one-time or short-term instructions or information relating to agency policies and procedures. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of the notices.

9. Department of the Treasury, Internal Revenue Service (N1–58–04–2, 2 items, 2 temporary items). U.S. gift tax returns (IRS Tax Forms 709) that cannot be associated with estate tax returns (IRS Tax Forms 706).

10. Department of the Treasury, Bureau of Engraving and Printing (N1–318–04–17, 5 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing that relate to building construction and renovation and special studies relating to initiatives and projects, such as currency design, electronic currency, and currency designed for the visually impaired. Recordkeeping copies of these files are proposed for permanent retention.

11. Department of the Treasury, Bureau of Engraving and Printing (N1–318–04–23, 12 items, 9 temporary items). Correspondence, working files, memorandums, reports, and studies accumulated by the Director and other high level officials concerning matters that are not related to the agency's primary mission and its policies, programs, and organizational structure. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of substantive policy, program, and organizational records of the Director and other high level officials.

12. Panama Canal Commission, Office of Transition Administration (N1–185–04–1, 10 items, 4 temporary items). Maps drawn on paper, cardboard, and polyester at various scales detailing the topography of the Panama Canal. Records include such information as spot elevations and contour lines and the location of structures, roads, utilities, wells, and survey monuments. Also included are maps drawn on paper and linen detailing periodic surveys of Canal hydrography. Proposed for permanent retention are obsolete maps at various scales that are no longer essential to ongoing operations.

13. Social Security Administration, Office of Facilities Management (N1–47–04–1, 1 item, 1 temporary item). Surveillance recordings of agency facilities. This schedule decreases the retention period of these records, which are approved for disposal in the General Records Schedules.

Dated: February 27, 2004.

**Michael J. Kurtz,**

*Assistant Archivist for Record Services—Washington, DC.*

[FR Doc. 04–4960 Filed 3–9–04; 8:45 am]

BILLING CODE 7515–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–259, 50–260, and 50–296]**

### Tennessee Valley Authority; Browns Ferry Nuclear Plant, Units 1, 2 and 3; Notice of Acceptance for Docketing of the Application and Notice of Opportunity for Hearing Regarding Renewal of Facility Operating License Nos. DPR–33, DPR–52, and DPR–68 for an Additional 20-Year Period

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering application for the renewal of Operating License Nos. DPR–33, DPR–52, and DPR–68, which authorize the Tennessee Valley

Authority (TVA) to operate the Browns Ferry Nuclear Plant at 3293 megawatts thermal for Unit 1, 3458 megawatts thermal for Unit 2, and 3458 megawatts thermal for Unit 3. The renewed licenses would authorize the applicant to operate Browns Ferry Nuclear Plant, Units 1, 2 and 3 for an additional 20 years beyond the period specified in the current licenses. The current operating license for the Browns Ferry Nuclear Plant Unit 1 expires on December 20, 2013, the current operating license for Browns Ferry Nuclear Plant Unit 2 expires on June 28, 2014, and the current operating license for Browns Ferry Nuclear Plant Unit 3 expires on July 2, 2016.

On January 6, 2004, the Commission's staff received an application from TVA filed pursuant to 10 CFR part 54, to renew the Operating License Nos. DPR–33, DPR–52, and DPR–68 for Browns Ferry Nuclear Plant, Units 1, 2 and 3, respectively. A notice of receipt and availability of the license renewal application, "TVA; Notice of Receipt and Availability of Application for Renewal of Browns Ferry Nuclear Plant, Units 1, 2 and 3, Facility Operating License Nos. DPR–33, DPR–52, and DPR–68 for Additional 20-Year Period," was published in the **Federal Register** on January 13, 2004 (69 FR 2012).

The Commission's staff has determined that TVA has submitted sufficient information in accordance with 10 CFR 54.19, 54.21, 54.22, 54.23, and 51.53(c) that is acceptable for docketing. The current Docket Nos. 50–259, 50–260, and 50–296 for Operating License Nos. DPR–33, DPR–52, and DPR–68, respectively, will be retained. The docketing of the renewal application does not preclude requesting additional information as the review proceeds, nor does it predict whether the Commission will grant or deny the application.

Before issuance of each requested renewed license, the NRC will have made the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. In accordance with 10 CFR 54.29, the NRC will issue a renewed license on the basis of its review if it finds that actions have been identified and have been or will be taken with respect to: (1) Managing the effects of aging during the period of extended operation on the functionality of structures and components that have been identified as requiring aging management review, and (2) time-limited aging analyses that have been identified as requiring review, such that there is reasonable assurance that the activities authorized by the renewed licenses will continue to be conducted in accordance with the current licensing basis (CLB), and that any changes made to the plant's CLB comply with the Act and the Commission's regulations.

Additionally, in accordance with 10 CFR 51.95(c), the NRC will prepare an environmental impact statement that is a supplement to the Commission's NUREG–1437, "Generic Environmental Impact Statement for License Renewal of Nuclear Power Plants," dated May 1996. Pursuant to 10 CFR 51.26, and as part of the environmental scoping process, the staff intends to hold a public scoping meeting. Detailed information regarding this meeting is included in a **Federal Register** notice also published today.

Within 60 days after the date of publication of this **Federal Register** notice, the applicant may file a request for a hearing, 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 with respect to the renewal of the licenses. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852 and is accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at *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's PDR reference staff at 1–800–397–4209, or by email at *pdr@nrc.gov*. If a request for a hearing or a petition for leave to intervene is filed within the 60-day period, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order. In the event that no request for a hearing or petition for leave to intervene is filed within the 60-day period, the NRC may, upon completion of its evaluations and upon making the findings required under 10 CFR parts 51 and 54, renew the licenses without further notice.

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, taking into consideration the limited scope of matters that may be considered pursuant to 10 CFR parts 51 and 54. The petition must specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases of each contention and a concise statement of the alleged facts or the expert opinion that supports the contention on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the requestor/petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The requestor/petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact.[1] Contentions shall be limited to matters within the scope of the action under consideration. The contention must be one that, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Each contention shall be given a separate numeric or alpha designation within one of the following groups:

[1] To the extent that the application contains attachments and supporting documents that are not publicly available because they are asserted to contain safeguards or proprietary information, petitioners desiring access to this information should contact the applicant or applicant's counsel to discuss the need for a protective order.

1. Technical—primarily concerns/issues relating to technical health and safety matters discussed or referenced in the Browns Ferry Nuclear Plants Units 1, 2 and 3 license renewal application.

2. Environmental—primarily concerns/issues relating to matters discussed or referenced in the Environmental Report for the license renewal application.

3. Miscellaneous—does not fall into one of the categories outlined above.

As specified in 10 CFR 2.309, if two or more requestors/petitioners seek to co-sponsor a contention, the requestors/petitioners shall jointly designate a representative who shall have the authority to act for the requestors/petitioners with respect to that contention. If a requestor/petitioner seeks to adopt the contention of another sponsoring requestor/petitioner, the requestor/petitioner who seeks to adopt the contention must either agree that the sponsoring requestor/petitioner shall act as the representative with respect to that contention, or jointly designate with the sponsoring requestor/petitioner a representative who shall have the authority to act for the requestors/petitioners with respect to that contention.

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, including the opportunity to participate fully in the conduct of the hearing. A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) e-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *hearingdocket@nrc.gov*; or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at 301–415–1101, verification number is 301–415–1966. A copy of the request for hearing and petition for leave to intervene must also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition, request and/or contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)–(viii).

Detailed information about the license renewal process can be found under the Nuclear Reactors icon at *http://www.nrc.gov/reactors/operating/licensing/renewal.html* on the NRC's Web page. Copies of the application to renew the operating licenses for Browns Ferry Nuclear Plant, Units 1, 2 and 3, are available for public inspection at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, 20855–2738, and at *http://www.nrc.gov/reactors/operating/licensing/renewal/applications/brownsferry.html* the NRC's Web page while the application is under review. The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html* under ADAMS accession number ML040060355. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, may contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

The staff has verified that a copy of the license renewal application is also available to local residents near the Browns Ferry Nuclear Plant at the Athens-Limestone Public Library, at 405 E. South Street, Athens, Alabama 35611.

Dated in Rockville, Maryland, this the 4th day of March, 2004.

For the Nuclear Regulatory Commission.

**Pao-Tsin Kuo,**

*Program Director, License Renewal and Environmental Impacts, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.*

[FR Doc. 04–5340 Filed 3–9–04; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–259, 50–260, and 50–296]**

### Tennessee Valley Authority, Browns Ferry Nuclear Plant, Units 1, 2, and 3; Notice of Intent to Prepare an Environmental Impact Statement and Conduct Scoping Process

Tennessee Valley Authority (TVA) has submitted an application for renewal of Facility Operating Licenses, DPR–33, DPR–52, and DPR–68 for an additional 20 years of operation at the Browns Ferry Nuclear Plant, Units 1, 2, and 3. The Browns Ferry Nuclear Plant (BFN) is located in Limestone County, Alabama, 16 km (10 mi) southwest of Athens, Alabama. The operating licenses for Browns Ferry Nuclear Plant, Units 1, 2, and 3 expire on December 20, 2013, June 28, 2014, and July 2, 2016, respectively. The application for renewal was received on January 6, 2004, pursuant to 10 CFR part 54. A notice of receipt and availability of the application, which included the environmental report (ER), was published in the **Federal Register** on January 13, 2004, (69 FR 2012). A notice of acceptance for docketing and notice of opportunity for hearing regarding renewal of the facility operating license is also published in the **Federal Register** today. The purpose of this notice is to inform the public that the U.S. Nuclear Regulatory Commission (NRC) will be preparing an environmental impact statement (EIS) in support of the review of the license renewal application and to provide the public an opportunity to participate in the environmental scoping process, as defined in 10 CFR 51.29. In addition, as outlined in 36 CFR 800.8, "Coordination with the National Environmental Policy Act," the NRC plans to coordinate compliance with section 106 of the National Historic Preservation Act in meeting the requirements of the National Environmental Policy Act (NEPA).

In accordance with 10 CFR 51.53(c) and 10 CFR 54.23, TVA submitted the ER as part of the application. The ER was prepared pursuant to 10 CFR part 51 and is available for public inspection at the NRC Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or from the Publicly Available Records component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible at *http://www.nrc.gov/reading-rm/adams.html*, which provides access through the NRC's Electronic Reading Room link. Persons who do not have

access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR Reference staff at 1–800–397–4209, or 301–415–4737, or by e-mail to *pdr@nrc.gov*. The application may also be viewed on the Internet at *http://www.nrc.gov/reactors/operating/licensing/renewal/applications/browns-ferry.html*. In addition, the Athens-Limestone Public Library, 405 East South Street, Athens, Alabama, has agreed to make the ER available for public inspection.

This notice advises the public that the NRC intends to gather the information necessary to prepare a plant-specific supplement to the Commission's "Generic Environmental Impact Statement (GEIS) for License Renewal of Nuclear Plants," (NUREG–1437) in support of the review of the application for renewal of the BFN operating licenses for an additional 20 years. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative energy sources. The NRC is required by 10 CFR 51.95 to prepare a supplement to the GEIS in connection with the renewal of an operating license. This notice is being published in accordance with the National Environmental Policy Act (NEPA) and the NRC's regulations found in 10 CFR part 51.

The NRC will first conduct a scoping process for the supplement to the GEIS and, as soon as practicable thereafter, will prepare a draft supplement to the GEIS for public comment. Participation in the scoping process by members of the public and local, State, Tribal, and Federal government agencies is encouraged. The scoping process for the supplement to the GEIS will be used to accomplish the following:

a. Define the proposed action which is to be the subject of the supplement to the GEIS.

b. Determine the scope of the supplement to the GEIS and identify the significant issues to be analyzed in depth.

c. Identify and eliminate from detailed study those issues that are peripheral or that are not significant.

d. Identify any environmental assessments and other EISs that are being or will be prepared that are related to, but are not part of the scope of the supplement to the GEIS being considered.

e. Identify other environmental review and consultation requirements related to the proposed action.

f. Indicate the relationship between the timing of the preparation of the environmental analyses and the Commission's tentative planning and decision-making schedule.

g. Identify any cooperating agencies and, as appropriate, allocate assignments for preparation and schedules for completing the supplement to the GEIS to the NRC and any cooperating agencies.

h. Describe how the supplement to the GEIS will be prepared, and include any contractor assistance to be used.

The NRC invites the following entities to participate in the scoping:

a. The applicant, TVA.

b. Any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved, or that is authorized to develop and enforce relevant environmental standards.

c. Affected State and local government agencies, including those authorized to develop and enforce relevant environmental standards.

d. Any affected Indian tribe.

e. Any person who requests or has requested an opportunity to participate in the scoping process.

f. Any person who intends to petition for leave to intervene.

In accordance with 10 CFR 51.26, the scoping process for an EIS may include a public scoping meeting to help identify significant issues related to a proposed activity and to determine the scope of issues to be addressed in an EIS. The NRC has decided to hold public meetings for the license renewal supplement to the GEIS. The scoping meetings will be held at the Athens State University, Student Center Cafeteria Ballroom, 300 North Beaty Street, Athens, Alabama, on Thursday, April 1, 2004. There will be two sessions to accommodate interested parties. The first session will convene at 1:30 p.m. and will continue until 4:30 p.m., as necessary. The second session will convene at 7 p.m. with a repeat of the overview portions of the meeting and will continue until 10 p.m., as necessary. Both meetings will be transcribed and will include:

(1) An overview by the NRC staff of the NEPA environmental review process, the proposed scope of the supplement to the GEIS, and the proposed review schedule; and

(2) the opportunity for interested government agencies, organizations, and individuals to submit comments or suggestions on the environmental issues or the proposed scope of the supplement to the GEIS. Additionally, the NRC staff will host informal discussions one hour before the start of each session at the Athens State University, Student Center Cafeteria Ballroom. No formal comments on the proposed scope of the supplement to the GEIS will be accepted during the informal discussions. To be considered, comments must be provided either at the transcribed public meetings or in writing, as discussed below. Persons may register to attend or present oral comments at the meetings on the scope of the NEPA review by contacting Dr. Michael Masnik, by telephone at 1–800–368–5642, extension 1191, or by Internet to the NRC at *BrownsFerryEIS@nrc.gov* no later than March 24, 2004. Members of the public may also register to speak at the meeting within 15 minutes of the start of each session. Individual oral comments may be limited by the time available, depending on the number of persons who register. Members of the public who have not registered may also have an opportunity to speak, if time permits. Public comments will be considered in the scoping process for the supplement to the GEIS. Dr. Masnik will need to be contacted no later than March 24, 2004, if special equipment or accommodations are needed to attend or present information at the public meeting, so that the NRC staff can determine whether the request can be accommodated.

Members of the public may send written comments on the environmental scope of the BFN license renewal review to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mailstop T–6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Comments may also be delivered to the NRC, Room T–6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. during Federal workdays. To be considered in the scoping process, written comments should be postmarked by no later than 60 days from today's date. Electronic comments may be sent by the Internet to the NRC at *BrownsFerryEIS@nrc.gov* and should be sent no later than 60 days from today's date to be considered in the scoping process. Comments will be available electronically and accessible through ADAMS at *http://www.nrc.gov/reading-rm/adams.html*.

Participation in the scoping process for the supplement to the GEIS does not entitle participants to become parties to the proceeding to which the supplement to the GEIS relates. Notice of opportunity for a hearing regarding the renewal application is the subject of a separate notice published today in the **Federal Register**. Matters related to

participation in any hearing are outside the scope of matters to be discussed at this public meeting.

At the conclusion of the scoping process, the NRC will prepare a concise summary of the determination and conclusions reached, including the significant issues identified, and will send a copy of the summary to each participant in the scoping process. The summary will also be available for inspection in ADAMS at *http://www.nrc.gov/reading-rm/adams.html*. The staff will then prepare and issue for comment the draft supplement to the GEIS, which will be the subject of separate notices and separate public meetings. Copies will be available for public inspection at the above-mentioned addresses, and one copy per request will be provided free of charge. After receipt and consideration of the comments, the NRC will prepare a final supplement to the GEIS, which will also be available for public inspection.

Information about the proposed action, the supplement to the GEIS, and the scoping process may be obtained from Dr. Masnik at the aforementioned telephone number or e-mail address.

Dated at Rockville, Maryland, this 4th day of March, 2004.

For the Nuclear Regulatory Commission.

**Pao-Tsin Kuo,**

*Program Director, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.*

[FR Doc. 04–5339 Filed 3–9–04; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

### Workshop To Discuss Combined License Topic 10 (COL–10), 10 CFR Part 52 Subpart C Emergency Planning Inspections, Tests, Analyses, and Acceptance Criteria (ITAAC)

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of April 27, 2004, public workshop.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is holding a workshop on April 27, 2004, to solicit comments on draft proposed emergency planning inspections, tests, analyses, and acceptance criteria (ITAAC). The NRC staff, in consultation with the Department of Homeland Security/Federal Emergency Management Agency (DHS/FEMA), crafted the draft proposed EP ITAAC, which addresses 15 of the 16 EP planning standards in title 10 of Code of Federal Regulations part 50, § 50.47(b), and NUREG–0654/FEMA–REP–1, Rev. 1, "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants" (NUREG–0654). (The excluded planning standard, 50.47(b)(13), pertains to the development of general plans for recovery and reentry, and was determined to not be applicable to EP ITAAC). The draft proposed EP ITAAC are available for public inspection in the Agencywide Document Access and Management System (ADAMS), Accession No. ML 033010440, and as described below. The NRC staff has scheduled the public workshop to discuss the draft proposed EP ITAAC issues and to solicit stakeholder comments on the staff's draft proposal. This workshop will be transcribed. To allow for timely registration on the day of the meeting, it is recommended that guests pre-register for the workshop. To pre-register for the workshop, contact Mr. Raj Anand (information provided below) and provide the following information: name, organization, phone number, and country of citizenship.

**FOR FURTHER INFORMATION CONTACT:** Mr. Raj K. Anand, New, Research and Test Reactors Program, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Mr. Anand can be reached by telephone at 301–415–1146, or by e-mail at *rka@nrc.gov*. Questions regarding the public meeting process should be directed to Mr. Francis (Chip) Cameron, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone 301–415–1642, or by e-mail at *fxc@nrc.gov*

**DATES:** The workshop will be held on April 27, 2004, from 10:30 a.m. to 4:30 p.m. Written comments on the NRC staff's draft proposed EP ITAAC should be submitted by May 27, 2004. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

**ADDRESSES:** The workshop will be held at the Nuclear Regulatory Commission offices in the Two White Flint North Auditorium, 11545 Rockville Pike, Rockville, Maryland.

The NRC staff's draft proposed EP ITAAC are available for public inspection in the Agencywide Document Access and Management System (ADAMS) in the NRC Public Document Room, located at One White Flint North, 11555 Rockville Pike, Public File Area O–1F21, Rockville, Maryland. The information is also available electronically from the Publicly Available Records (PARS) component of ADAMS (ADAMS Accession No. ML033010440). ADAMS is accessible from the NRC's Web site at *http://www.nrc.gov/reading-rm/adams.html* (Public Electronic Reading Room). For more information, contact the NRC Public Document Room (PDR) Reference staff at 800–397–4209, 202–634–3273, or by email at *pdr@nrc.gov*. In addition, the draft proposed EP ITAAC and additional associated documentation can be found on NRC's Web site under the Combined Licenses discussion on the following Web page: *http://www@nrc.gov/reactors/new-licensing/licensing-process.html*.

Written comments on the draft proposal may be sent to: Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop T–6D59, Nuclear Regulatory Commission, Washington, DC 20555–0001. Comments may also be hand-delivered to the NRC at 11545 Rockville Pike, Rockville, Maryland, between the hours of 7:45 a.m. and 4:15 p.m. on Federal workdays, or submitted electronically by e-mail at *nrcrep@nrc.gov*. All comments received by the Commission, including those made by Federal, State, and local agencies, Indian tribes, or other interested persons, will be made available at the Commission's PDR in Rockville, Maryland, or electronically from the PARS component of NRC's document system (ADAMS).

**SUPPLEMENTARY INFORMATION:** In 1989, the NRC established new alternatives for nuclear plant licensing under title 10 of the Code of Federal Regulations (10 CFR) part 52, which describe, among other things, a process for issuing a combined construction and operating license, referred to as a combined license (COL). A COL authorizes construction and, with conditions, operation of a nuclear power plant. A COL application must describe the license conditions (*i.e.*, inspections, tests, analyses, and acceptance criteria, referred to as ITAAC) that are necessary to ensure that the plant has been properly constructed and will operate safely. After issuing a COL, the NRC would verify that the licensee completed the required ITAAC before initial loading of fuel into the plant. The NRC would publish notices of the successful completion of the ITAAC. Following successful completion of all ITAAC, and not less than 180 days before the date scheduled for initial loading of nuclear fuel into the reactor, the NRC would publish in the **Federal Register** a notice of intended operation.

The notice would provide that any person whose interest may be affected by operation of the plant may, within 60 days, request that the Commission hold a hearing on whether the facility as constructed complies, or on completion will comply, with the acceptance criteria of the COL. A request for a hearing must show, *prima facie,* that (1) one or more of the acceptance criteria in the COL have not been, or will not be met, and (2) the specific operational consequences of non-conformance that would be contrary to providing reasonable assurance of adequate protection of the public health and safety.

The development of EP ITAAC is part of an NRC effort to develop guidance related to the structure and content of prospective COL applications, which would be submitted under subpart C of 10 CFR part 52. The draft proposed EP ITAAC reflect the current collective efforts of NRC and FEMA staff to provide this guidance, while incorporating various lessons learned from previous design certification reviews under subpart B of 10 CFR part 52.

The staff proposes to discuss the following issues with interested stakeholders:

1. The draft proposed EP ITAAC contain high-level generic acceptance criteria. These criteria were adapted from those found in NUREG–0654. It is expected that a COL applicant will be able to provide more detailed EP ITAAC that are site-specific at the COL application stage. Such detailed EP ITAAC would satisfy the intent of the proposed generic EP ITAAC. Among the questions the staff will address with the interested stakeholders is whether it is necessary to capture guidance related to providing detailed EP ITAAC and, if so, what the best way is to capture such guidance.

2. The offsite acceptance criteria in the draft proposed EP ITAAC assume State and local government participation. If State and local officials terminate or limit their cooperation between the time of COL issuance and fuel loading, the draft proposed EP ITAAC may no longer be valid. In that case, the EP ITAAC incorporated in the license under 10 CFR 52.97(b)(1) would have to be changed by a license amendment, in accordance with 10 CFR 52.97(b)(2)(i). The staff will discuss with stakeholders the feasibility of developing offsite EP ITAAC, that cover both possibilities (*i.e.*, assuming State and local government participation, as well as non-participation).

3. The draft proposed EP ITAAC contain references to emergency plans. The staff attempted to distinguish those issues which should be resolved prior to issuance of a COL from those which can be resolved only after issuance of a COL. For example, the emergency plans and the EP ITAAC would be reviewed and approved prior to granting a COL, while compliance with the ITAAC would be assessed post-licensing, using the ITAAC to verify the implementation of the emergency plans. The staff will discuss stakeholder views on the need for clarification of the draft proposed EP ITAAC, in order to separate those issues which should be resolved prior to issuance of a COL from those which can be resolved only after the COL is issued.

4. Compliance with some of the ITAAC in the draft proposed EP ITAAC could be assessed concurrently. Discussions with stakeholders will include this concurrent review and its implications.

An agenda for the workshop will be developed and made available prior to the April 27, 2004, public workshop. In order to assure a diversity of viewpoints, the NRC is inviting stakeholders from the nuclear power industry, representatives from citizens groups, and State and local agencies to sit in a round table discussion. Although the focus of the public workshop will be on the round table discussion, there will be opportunities for members of the audience to offer comments and ask questions at the workshop.

Prior to the workshop, questions relating to the staff's draft proposed EP ITAAC can be directed to Mr. Raj Anand. Questions related to the public meeting process should be directed to Mr. Francis Cameron. Contact information for Messrs. Anand and Cameron is provided above.

Dated at Rockville, Maryland, this 4th day of March, 2004.

For the Nuclear Regulatory Commission.

**James E. Lyons,**

*Program Director, New, Research and Test Reactors Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.*

[FR Doc. 04–5341 Filed 3–9–04; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on the Medical Uses of Isotopes: Meeting Notice

**AGENCY:** U.S. Nuclear Regulatory Commission.

**ACTION:** Notice of meeting.

**SUMMARY:** The U.S. Nuclear Regulatory Commission will convene a teleconference meeting of the Advisory Committee on the Medical Uses of Isotopes (ACMUI) on March 22, 2004. The topics of discussion will be training and experience (T&E) issues associated with 10 CFR 35.300, other T&E issues as necessary, and the dose reconstruction associated with the St. Joseph Mercy Hospital case.

**DATES:** The teleconference meeting will be held on Monday, March 22, 2004, from 1 p.m. to 3 p.m. Eastern Standard Time.

*Public Participation:* Any member of the public who wishes to participate in the teleconference discussion may contact Angela R. Williamson using the contact information below.

**FOR FURTHER INFORMATION CONTACT:** Angela R. Williamson, telephone (301) 415–5030; e-mail *arw@nrc.gov* of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

**Conduct of the Meeting**

Manuel D. Cerqueira, M.D., will chair the meeting. Dr. Cerqueira will conduct the meeting in a manner that will facilitate the orderly conduct of business. The following procedures apply to public participation in the meeting:

1. Persons who wish to provide a written statement should submit a reproducible copy to Angela Williamson, U.S. Nuclear Regulatory Commission, Two White Flint North, Mail Stop T8F5, Washington, DC 20555–0001. Hard copy submittals must be postmarked by March 17, 2004. Electronic submittals must be submitted by March 17, 2004. Any submittal must pertain to the topic on the agenda for the meeting.

2. Questions from members of the public will be permitted during the meeting, at the discretion of the Chairman.

3. The transcript and written comments will be available for inspection on NRC's Web site (*http://www.nrc.gov*) and at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD 20852–2738, telephone (800) 397–4209, on or about April 1, 2004. Minutes of the meeting will be available on or about May 3, 2004.

This meeting will be held in accordance with the Atomic Energy Act of 1954, as amended (primarily Section 161a); the Federal Advisory Committee Act (5 U.S.C. App); and the Commission's regulations in Title 10, U.S. Code of Federal Regulations, part 7.

Dated: March 4, 2004.

**Andrew L. Bates,**

*Advisory Committee Management Officer.*

[FR Doc. 04–5338 Filed 3–9–04; 8:45 am]

BILLING CODE 7590–01–P

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

**FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT:** 69 FR 10278, March 4, 2004.

**STATUS:** Closed Meeting.

**PLACE:** 450 Fifth Street, NW., Washington, DC.

**DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING:** Tuesday, March 9, 2004 at 2 p.m.

**CHANGE IN THE MEETING:** Deletion of Items.

The following items will not be considered during the Closed Meeting on March 9, 2004:

Settlement of an administrative proceeding; and

A litigation matter.

Commissioner Goldschmid, as duty officer, determined that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 942–7070.

Dated: March 5, 2004.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04–5507 Filed 3–8–04; 1:11 pm]

BILLING CODE 8010–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 35–27807]**

### Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

March 4, 2004.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by March 29, 2004, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After March 29, 2004, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

**Unitil Corporation (70–10204)**

Unitil Corporation ("Unitil"), a registered holding company under the Act, 6 Liberty Lane West, Hampton, New Hampshire 03842–1720, has filed an application-declaration ("Application") under sections 6(a) and 7 of the Act.

Unitil seeks authority to issue up to 177,500 shares of Unitil common stock, no par value ("Common Stock"), under the Unitil Corporation 2003 Restricted Stock Plan ("Plan").

The Plan was adopted by the Board of Directors of Unitil ("Board") in January 2003 and became effective after approval by Unitil's shareholders in April 2003. In accordance with the terms of the Plan, awards for shares of restricted stock may be granted under the Plan and are evidenced by an Award Agreement, entered into by the participant and Unitil, setting forth the terms and provisions applicable to the award. Persons eligible to participate in the Plan include all employees, directors and consultants of Unitil, its subsidiaries and its affiliates (collectively, "Unitil Companies"). Unitil entered into the initial set of award agreements under the Plan with employees of the Unitil Companies in May 2003 relating to 10,600 shares, the restrictions on which begin to lapse in May 2004 in accordance with the terms of the Plan as described in detail below.

The aggregate maximum number of shares of restricted stock available for awards to participants under the Plan (including these subject to the initial set of awards) is 177,500.[1] The maximum aggregate number of shares of restricted stock that may be awarded in any one calendar year to any one participant is 20,000. In the event of any change in capitalization of Unitil, the Board's Compensation Committee is authorized to make proportionate adjustments to prevent dilution or enlargement of rights, including, without limitation, an adjustment in the maximum number and kinds of shares available for awards and in the annual award limit.

The Plan is administered by the Compensation Committee. Except as limited by law or by the Articles of Incorporation or the Bylaws of Unitil, and subject to the provisions of the Plan, the Compensation Committee has full power to select the persons who participate in the Plan; determine the sizes of awards; determine the terms and conditions of awards in a manner consistent with the Plan; construe and interpret the Plan and any agreement or instrument entered into under the Plan as they apply to participants; establish, amend, or waive rules and regulations for the Plan's administration as they apply to participants; and, subject to the provisions of the Plan, amend the terms and conditions of any outstanding award to the extent the terms and conditions are within the discretion of the Compensation Committee as provided in the Plan.

The objectives of the Plan are to optimize the profitability and growth of Unitil through incentives that are consistent with Unitil's goals and that link the personal interests of Plan participants to those of Unitil's shareholders, to attract and retain employees and directors of outstanding ability, and to promote teamwork among participants. The Plan will remain in effect, subject to the right of the Board to amend or terminate the Plan at any time, until all shares subject to it are purchased or acquired according to the Plan's provisions.

Awards under the Plan will vary each year based on the achievement of annual performance objectives that directly correlate with the annual performance objectives as defined by the Unitil Management Incentive Plan ("Incentive Plan"). Whereas the Incentive Plan provides cash incentive payments that are tied directly to achievement of Unitil's strategic goals, the Plan provides for awards for restricted shares of Common Stock that are tied directly to achievement of Unitil's strategic goals. Annual

[1] At the time that the Plan was adopted, Unitil also terminated its stock option plan previously approved by the Commission (Holding Co. Act Release No. 26978 (Feb. 17, 1999)) under which 177,500 options and underlying shares of common stock remained authorized for issuance.

performance objectives are established each year by the Board. The percentage of the target award that a Plan participant receives is also based upon subjective evaluations by the Compensation Committee, such as management's performance in capitalizing on unplanned opportunities and responding to unforeseen problems. Target grant awards have been established that vary based upon the grade level of each participant's position in the Unitil Companies. The actual number of shares of Common Stock received under awards can be less than or greater than the target grant depending upon actual results achieved.

Awards will fully vest over a period of four years ("Period of Restriction") at a rate of 25% each year. During the Period of Restriction, the Plan provides that the restricted shares underlying the award may not be sold, transferred, pledged, assigned or otherwise alienated or hypothecated by the recipient and no share certificates are issued. Prior to the end of the Period of Restriction, the award of restricted shares shall be subject to forfeiture if the participant ceases to be employed by the Unitil Companies other than due to the participant's death. Awards may be subject to additional restrictions as the Compensation Committee may determine to be appropriate and as set forth in the particular Award Agreement. Subject to restrictions under applicable law or as may be imposed by the Unitil Compensation Committee, restricted shares underlying each award made under the Plan shall become freely transferable by the Plan participant after the last day of the applicable Period of Restriction.

During the Period of Restriction, cash dividends paid on restricted shares underlying granted awards may be credited to the recipient's account. In the event any non-cash dividends or other distributions, whether in property, or in stock of another company, are paid on any restricted shares during the Period of Restriction, these non-cash dividends or other distributions will be retained by Unitil until the Period of Restriction has lapsed. In the event of forfeiture of the restricted shares, these non-cash dividend or other distributions will be retained by Unitil.

Awards may be grossed-up to offset the participant's tax obligation in connection with the award. This gross-up feature was intended to prevent a participant from having to sell a portion of the shares granted in the award or previous awards in order to pay the taxes on the award, which would be a direct contradiction to one of the stated objectives of the Plan, which is to encourage stock ownership in Unitil. The Compensation Committee will take into account the value of the gross-up feature and reduce the size of the awards accordingly.

Upon the occurrence of a change in control, unless otherwise specifically prohibited under applicable laws, rules or regulations, any restrictions and transfer limitations imposed on restricted shares will lapse immediately.

The Board may at any time amend or terminate the Plan or any award granted under the Plan in whole or in part. No amendment that requires shareholder approval in order for the Plan to continue to comply with any applicable tax or securities laws or regulations or the rules of any securities exchange on which the securities of Unitil are listed shall be effective unless the amendment is approved by the requisite vote of shareholders of Unitil. No amendment or termination shall adversely affect any award previously granted under the Plan without the consent of the participant.

Unitil is authorized under its articles of incorporation to issue 8,000,000 shares of common stock, and as of December 31, 2003, 5,500,610 shares of common stock were issued and outstanding.[2] Unitil will file a registration statement on Form S–8 (the "Registration Statement") with the Commission in order to register this proposed offering under the Securities Act of 1933, as amended ("Securities Act").

At December 31, 2003, assuming that all of the shares of Common Stock reserved for issuance under the Plan are issued and vested under the Plan, Unitil's consolidated capitalization ratios would have been approximately as follows (in $1,000):

| | | |
|---|---|---|
| Long-Term Debt | $114,224 | 49.1% |
| Short-Term Debt | 22,410 | 9.6% |
| Preferred Stock | 3,269 | 1.4% |
| Common Stock | 92,805 | 39.9% |
| Total | 232,708 | 100% |

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04–5375 Filed 3–9–04; 8:45 am]

BILLING CODE 8010–01–P

[2] For purposes of its GAAP balance sheet, Unitil has treated the shares underlying outstanding award agreements as outstanding.

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–49351; File No. SR–Amex–2003–110]**

## Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC Relating to Procedures Applicable to Continued Listing Evaluation and Follow-Up

March 2, 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 December 12, 2003, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On February 19, 2004, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Section 1009 of the Amex Company Guide ("Company Guide") to clarify the authority of the Exchange staff to establish a time period of less than 18 months for a listed company that is below the continued listing standards to return to compliance thereof.

The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in brackets.

* * * * *

**Sec. 1009. Continued Listing Evaluation And Follow-Up**

(a) The following procedures shall be applied by the Exchange staff to companies identified as being below the Exchange's continued listing policies and standards. Notwithstanding such procedures, when the Exchange staff deems it necessary for the protection of investors, trading in any security can be suspended immediately, and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Claudia Crowley, Vice President, Listing Qualifications, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated February 18, 2004 ("Amendment No. 1"). In Amendment No. 1, the Amex replaced the text of the proposed rule change in its entirety.

application made to the SEC to delist the security *and/or the Exchange staff may truncate the procedures specified in this Section.*

(b) Once the Exchange staff identifies, through internal reviews or notice (a press release, news story, company communication, etc.), a company as being below the continued listing criteria set forth in Sections 1001 through 1006 (and not able to otherwise qualify under an initial listing standard), the Exchange staff will notify the company by letter of its status within 10 business days. This letter will also provide the company with an opportunity to provide the Exchange staff with a plan (the "Plan") advising the Exchange staff of action the company has taken, or will take, that would bring it into compliance with the continued listing standards within 18 months of receipt of the letter. *However, the Exchange staff may establish a time period of less than 18 months for a company to regain compliance with some or all of the continued listing standards if it determines that the nature and circumstances of the company's particular continued listing status warrant such shorter period of time (see Commentary .01).* Within 10 *five* business days after receipt of the letter, the company must contact the Exchange staff to confirm receipt of the notification, discuss any possible financial data of which the Exchange staff may be unaware, and indicate whether or not it plans to present a Plan; otherwise, delisting proceedings will commence.

(c) The company has 30 days from the receipt of the letter to submit its Plan to the Exchange staff for review[;]. *However, the Exchange staff may require submission of a company's Plan within less than 30 days (but in no event less than seven days) if the Exchange staff has established a time period of 90 days or less for the company to regain compliance with some or all of the continued listing standards pursuant to paragraph (b) of this Section.* [i]If it does not submit a Plan within [this] *the specified time* period, delisting procedures will commence. The Plan must include specific milestones, quarterly financial projections, and details related to any strategic initiatives the company plans to complete. Exchange staff will evaluate the Plan, including any additional documentation that supports the Plan, and make a determination as to whether the company has made reasonable demonstration in the Plan of an ability to regain compliance with the continued listing standards within the [18 month] *time* period described in paragraph (b) of this Section. The Exchange staff will make such determination within 45 days of receipt of the proposed Plan *(or such shorter period of time as is consistent with the time period established by the Exchange staff for the company to regain compliance pursuant to paragraph (b) of this Section)*, and will promptly notify the company of its determination in writing.

(d) and (e)—No change.

(f) If, prior to the end of the [18-month] extension period, the company is able to demonstrate compliance with the continued listing standards (or that it is able to qualify under an original listing standard) for a period of two consecutive quarters, the Exchange staff will deem the Plan period over. If the company does not meet continued listing standards at the end of the [18-month] extension period, the Exchange staff will promptly initiate delisting procedures.

(g) through (i)—No change.

*Commentary . . .*

*.01 In determining whether to establish a time period of less than whether to establish a time period of less than 18 months for a company to regain compliance with some or all of the continued listing standards, pursuant to paragraph (b), the Exchange staff will consider whether, in view of the nature and severity of the particular continued listing deficiency, including the investor protections concerns raised, 18 months would be an inappropriately long period of time to regain compliance. While it is not possible to enumerate all possible circumstances, the following is a non-exclusive list of the types of continued listing deficiencies that, based on the a particular listed company's unique situation, may result in imposition of a shorter time period: delinquencies with respect to SEC filing obligations, severe short-term liquidity and/or financial impairment, present or potential public interest concerns;*[4] *deficiencies with respect to the requisite distribution requirements that make the security unsuitable for auction market trading.*

* * * * *

[4] *Public interest concerns could include, for example, situations where the company, a corporate officer or affiliate is the subject of a criminal or regulatory investigation or action; or the company's auditors have resigned and withdrawn their most recent audit opinion raising concerns regarding the internal controls and financial reporting process. However, other situations not specifically enumerated could also raise public interest concerns regarding the appropriateness of a particular company's continued listing.*

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

Section 1009 of the Company Guide became effective in May 2002.[5] It specifies the procedures applicable to listed companies identified as being below the continued listing standards, and provides such companies with the opportunity to submit a business plan to the staff of the Amex Listing Qualifications Department detailing the action it has taken or proposes to take to bring it into compliance with the continued listing standards within 18 months. Any business plan submitted pursuant to this provision is subject to approval and monitoring by the staff of the Listing Qualifications Department, as well as public disclosure by the listed company.

The Exchange's experience with the procedures specified in section 1009 of the Company Guide indicates that certain clarifying amendments are necessary. Specifically, paragraphs (b) and (c) specify that a listed company identified as below the continued listing standards must submit a business plan which makes a reasonable demonstration of an ability to regain compliance with 18 months. However, paragraph (a) provides that the Exchange staff may initiate immediate delisting proceedings at any time, notwithstanding the specified procedures, if deemed necessary for the protection of investors. In view of this broad authority, the staff of Listing Qualifications Department has occasionally required a particular listed company to submit a business plan demonstrating an ability to regain compliance within less than 18 months. Such shortened time periods have been applied in circumstances in which the

[5] See Securities Exchange Act Release No. 45898 (May 8, 2002), 67 FR 34502 (May 14, 2002) (order approving File No. SR–Amex–2001–47).

staff believed that 18 months was an inappropriately long period of time to regain compliance in view of the nature and severity of the particular continued listing deficiency. For example, companies which are delinquent with respect to SEC filing obligations, facing severe short-term liquidity and financial impairment, or present potential public interest concerns,[6] or deficiencies with respect to the requisite distribution requirements that make the security unsuitable for auction market trading, have typically been required to return to compliance with the impacted continued listing standards within 30 to 90 days. In some cases, a particular company has been given staggered extension deadlines (*i.e.*, the company must resolve its SEC filing deficiency and short-term financial impairment issues within 30 days, but is given 18 months to increase its shareholders equity to the required level).

Although none of the listed companies that have been subject to the shortened extension periods have challenged the staff's authority to impose a shorter period, some have raised questions about it. Accordingly, the Exchange is proposing to revise section 1009 of the Company Guide to clarify that the staff may establish a time period of less than 18 months for a listed company to regain compliance with some or all of the continued listing standards, if the nature and circumstances of the company's particular continued listing status warrant such shorter time period. In addition, the Exchange proposes that corresponding revisions be made to the applicable submission and review deadlines.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[7] in general, and furthers the objectives of section 6(b)(5) of the Act,[8] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

*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*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve such proposed rule change; or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–Amex–2003–110. The 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, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should be submitted by March 31, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04–5377 Filed 3–9–04; 8:45 am]

BILLING CODE 8010–01–P

[6] Public interest concerns could include, for example, situations where the company, a corporate officer or affiliate is the subject of a criminal or regulatory investigation or action; or the company's auditors have resigned and withdrawn their most recent audit opinion raising concerns regarding the internal controls and financial reporting process. However, other situations not specifically enumerated could also raise public interest concerns regarding the appropriateness of a particular company's continued listing.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–49358; File No. SR–Amex–2004–09]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC Relating to a Per Trade Options Fee Cap

March 3, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4[2] thereunder, notice is hereby given that on January 30, 2004, the American Stock Exchange LLC ("Exchange" or "Amex") 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 Amex. On March 1, 2004, Amex filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Jeffrey P. Burns, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated February 27, 2004 ("Amendment No. 1"). In Amendment No. 1, Amex clarified that proposal is intended to apply the reduced transaction fees set forth in footnote 1 to the Options Fee Schedule to member broker-dealers and revised the proposed rule text to conform it to recent changes made to the Options Fee Schedule. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers that period to commence on March 1, 2004, the date Amex filed Amendment No. 1 to the proposed rule change. *See* 15 U.S.C. 78s(b)(3)(C).

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

Amex proposes to amend its Options Fee Schedule to adopt an options fee cap of $2,000 per trade, exclusive of the options licensing fee, for specialists, registered options traders ("ROTs"), member broker-dealers, and non-member broker-dealers in connection with cabinet trades and certain options strategies. Amex also proposes to apply reduced transaction fees set forth in footnote 1 to the Options Fee Schedule to member broker-dealers.

The text of the proposed rule change is available at Amex and at the Commission.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

I. Purpose

Amex is proposing to impose an options fee cap of $2,000 per trade, exclusive of the options licensing fee, for specialists, ROTs, member broker-dealers, and non-member broker-dealers in connection with cabinet trades[4] and the following options strategies: (a) reversals and conversions;[5] (b) dividend spreads;[6] (c) box spreads;[7] and (d) butterfly spreads[8] (collectively "Spread Trades"). Cabinet trades and Spread Trades are currently subject to reduced fees, exclusive of license fees, as a result of a fee rebate program.[9]

Pursuant to the Options Fee Schedule, the Exchange imposes charges for transactions in options executed on the Exchange by specialists, ROTs, member broker-dealers, and non-member broker-dealers. Current charges for specialist and ROT transactions in equity options and index options are $0.36 and $0.31, respectively, per contract side. For member broker-dealers and non-member broker-dealers, the current charge for equity options and index options is $0.26 and $0.18, respectively, per contract side. The current fees for specialists, ROTs, and non-member broker-dealers in connection with cabinet trades and Spread Trades have previously been reduced, exclusive of the options licensing fee, as a result of a fee rebate program. These transactions are currently subject to reduced fees so that the options transaction fee, the options comparison fee, and the options floor brokerage fee are reduced by $0.09, $0.01, and $0.02, respectively. The current proposal will apply this fee rebate program to member broker-dealers.

The Exchange is proposing to adopt a maximum fee amount that may be collected on a per trade basis from specialists, ROTs, member broker-dealers, and non-member broker-dealers in connection with cabinet trades and the Spread Trades. The proposed maximum fee amount is $2,000 per trade.[10]

The Exchange believes that the proposed fee cap in connection with cabinet trades should encourage specialists and ROTs to provide liquidity as an accommodation to investors seeking to close out worthless option positions. Amex also believes that capping fees should also encourage specialists and ROTs to provide liquidity for reversals, conversions, dividend spreads, box spreads, and butterfly spreads. Amex notes that these financing strategies are entered into by professionals with narrow profit margins. Therefore, by capping fees, Amex believes that such professionals may find the Exchange an attractive venue to execute their trades.

Amex believes that the ability to compete with the other options exchanges for order flow based on pricing is essential for the continued vitality of the Exchange's options market. In addition, Amex believes that pricing changes must be done on a timely basis in order to be beneficial.

2. Basis

The Exchange believes the proposed rule change is consistent with Section 6 of the Act,[11] in general, and with 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 its members and other persons using its facilities.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

Amex does not believe that the proposed rule change will impose any burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[13] and subparagraph (f)(2) of Rule 19b–4[14] thereunder, because it establishes or changes a due, fee, or other charge.

At any time within 60 days of the filing of the proposed rule change,[15] the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[16]

**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. Persons making written submissions should file six copies thereof with the

[4] *See* Amex Rule 959.

[5] A "conversion" is a strategy in which a long put and a short call with the same strike price and expiration date are combined with long underlying stock to lock in a nearly risk-less profit. A "reversal" is a strategy in which a short put and long call with the same strike price and expiration date are combined with short stock to lock in a nearly risk-less profit.

[6] A "dividend spread" is any trade done within a defined time frame in which a dividend arbitrage can be achieved between any two (2) deep-in-the-money options.

[7] A "box spread" is a spread strategy that involves a long call and short put at one strike price as well as a short call and long put at another strike price. This is a synthetic long stock position at one strike price and a synthetic short stock position at another strike price.

[8] A "butterfly spread" is an option strategy that has both limited risk and limited profit potential, constructed by combining a bull spread and a bear spread having the same expiration date for all options. Three (3) strike prices are involved, with the lower two strikes being utilized in the bull spread and the higher two (2) strikes in the bear spread. The strategy may be established with either puts or calls.

[9] *See* Securities Exchange Act Release Nos. 46026 (June 4, 2002), 67 FR 40034 (June 11, 2002), and 48219 (July 23, 2003), 68 FR 44823 (July 30, 2003).

[10] Amex represents that the current rebate program remains unchanged for transactions below the $2,000 maximum.

[11] 15 U.S.C. 78f.

[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)(2).

[15] *See* note 3 *supra*.

[16] *See* 15 U.S.C. 78s(b)(3)(C).

Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments should be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–Amex–2004–09. This file number should be included on the subject line if e-mail is used. To help the Commission process and review comments more efficiently, comments should be sent in hard copy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of Amex. All submissions should be submitted by March 31, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04–5378 Filed 3–9–04; 8:45 am]

BILLING CODE 8010–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–49354; File No. SR–ISE–2004–03]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the International Securities Exchange, Inc. Relating to the Elimination of the Marketing Fee

March 2, 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 February 23, 2004, the International Securities Exchange, Inc. ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which the ISE has prepared. 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 Exchange proposes to amend its Schedule of Fees to eliminate the Marketing Fee.

### 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 ISE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The ISE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend its Schedule of Fees to eliminate the Marketing Fee. The Marketing Fee is a $.10 per contract execution fee that is charged to a market maker for each contract it executes against a public customer. The fee was used to support Exchange-wide marketing efforts.[3] The fee is currently waived until June 30, 2004.[4] The Exchange is proposing to eliminate this fee to reduce its fees for members; the Exchange will support marketing efforts out of general revenues.

2. Statutory Basis

The Exchange believes that this proposal to amend its schedule of dues, fees and charges would be an equitable allocation of reasonable fees among ISE members, and that the proposal is consistent with Section 6(b) of the Act[5] and furthers the objectives of Section 6(b)(4) of the Act.[6]

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The ISE neither solicited nor received written comments on this proposal.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act[7] and Rule 19b–4(f)(2)[8] thereunder. Accordingly, the proposal has taken effect upon filing with the Commission. 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–ISE–2004–03. 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, comments should be sent in hard copy or by e-mail, but not by both methods. 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

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission notes that the ISE's marketing fee received approval by the Commission for implementation in 2001. *See* Securities Exchange Act Release No. 44101 (March 26, 2001), 66 FR 17590 (April 2, 2001) (SR–ISE–01–06).

[4] The Commission notes that the marketing fee was first waived in SR–ISE–2002–16. *See* Securities Exchange Act Release No. 46189 (July 11, 2002), 67 FR 47587 (July 19, 2002). The waiver has subsequently been extended three times. *See* Securities Exchange Act Release Nos. 46976 (December 9, 2002), 67 FR 77116 (December 16, 2002) (SR–ISE–2002–26); 48219 (July 3, 2002), 68 FR 41409 (July 11, 2002) (SR–ISE–2003–16); and 48955 (December 18, 2003), 68 FR 75007 (December 29, 2003) (SR–ISE–2003–31).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2).

Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the ISE. All submissions should refer to File No. SR–ISE–2004–03 and should be submitted by March 31, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04–5379 Filed 3–9–04; 8:45 am]

BILLING CODE 8010–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–49347; File No. SR–PCX–2002–66]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to Marking Orders and Affirmative Determinations

March 1, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 30, 2002, the Pacific Exchange, Inc. ("PCX") filed with the Securities and Exchange Commission a proposed rule change relating to marking orders and affirmative determinations. On January 2, 2004, the PCX filed Amendment No. 1 to the proposed rule change, which replaced the original filing in its entirety. Amendment No. 1 is described in Items I, II and III below, which the PCX has prepared. 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 PCX, through its wholly owned subsidiary PCX Equities, Inc. ("PCXE"), proposes to amend PCXE Rule 7.16(c) regarding an ETP Holder's obligation to make affirmative determinations. The text of the proposed rule change is below. New text is italicized and deleted text is in brackets.

* * * * *

Rule 7.16(c) Marking Orders *and Affirmative Determinations* [No ETP Holder of the Corporation shall mark a sell order "long" unless (1) the security to be delivered after sale is carried in the account for which the sale is to be effected or (2) such ETP Holder is informed that the seller owns the security ordered to be sold, and as soon as is possible without undue inconvenience or expense, will deliver the security owned to the account for which the sale is to be effected.]

*(1) Long Sales—No ETP Holder or associated person for whom the Exchange serves as the Designated Examining Authority may accept a long sale order from any customer in any security (except exempt securities other than municipals) unless:*

*(A) The ETP Holder has possession of the security;*

*(B) The security is long in the customer's account with the ETP Holder;*

*(C) The ETP Holder or associated person makes an affirmative determination that the customer owns the security and will deliver it in good deliverable form within three (3) business days of the execution of the order; or*

*(D) The security is on deposit in good deliverable form with an ETP Holder of the Exchange, a member of a national securities exchange, a broker/dealer registered with the SEC, or any organization subject to state or federal banking regulations and that instructions have been forwarded to that depository to deliver the securities against payment.*

*(2) Short Sales*

*(A) Customer short sales—No ETP Holder or associated person for whom the Exchange serves as the Designated Examining Authority shall accept a "short" sale order for any customer in any security unless the ETP Holder or associated person makes an affirmative determination that the ETP Holder will receive delivery of the security from the customer or that the ETP Holder can borrow the security on behalf of the customer for delivery by settlement date. This requirement does not apply, however, to transactions in corporate debt securities.*

*(B) Proprietary short sales—No ETP Holder may effect a "short" sale for its own account in any security unless the ETP Holder or associated person makes an affirmative determination that the ETP Holder can borrow the securities or otherwise provide for delivery of the securities by the settlement date. This requirement will not apply to transactions in corporate debt securities, to bona fide market making transactions by an ETP Holder in securities in which it is registered as an exchange market maker, or to transactions that result in fully hedged or arbitraged positions. For the purposes of this paragraph, transactions unrelated to normal market making activity, such as index arbitrage and risk arbitrage that are independent from an ETP Holder's market making functions, will not be considered bona fide market making activity. Similarly, bona fide market making would exclude activity that is related to speculative selling strategies of the ETP Holder or investment decisions of the firm and is disproportionate to the usual market making patterns or practices of the ETP Holder in that security.*

*(3) Affirmative Determination*

*(A) To satisfy the requirements for an "affirmative determination" contained in subsection (c)(1)(C) above for long sales, the ETP Holder or associated person must make a notation on the order ticket at the time the order is taken that reflects the conversation with the customer as to the present location of the securities in question, whether they are in good deliverable form and the customer's ability to deliver them to the ETP Holder within three (3) business days.*

*(B) To satisfy the requirement for an "affirmative determination" contained in subsection (c)(2)(B) above for customer and proprietary short sales, the ETP Holder or associated person must keep a written record that includes: (i) If a customer assures delivery, the present location of the securities in question, whether they are in good deliverable form and the customer's ability to deliver them to the ETP Holder within three (3) business days; or (ii) if the ETP Holder or associated person locates the stock, the identity of the individual and firm contacted who offered assurance that the shares would be delivered or that were available for borrowing by settlement date and the number of shares needed to cover the short sale.*

*(C) The manner by which an ETP Holder or associated person annotates compliance with the "affirmative determination" requirement contained above (e.g., marking the order ticket, recording inquiries in a log, etc.) is not specified by this Rule and, therefore, will be decided by each ETP Holder. ETP Holders may rely on "blanket" or standing assurances (i.e.≤, "Easy to Borrow" lists) that securities will be*

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

*available for borrowing on settlement date to satisfy their affirmative determination requirements under this Rule. For any short sales executed in Nasdaq National Market ("NNM") or national securities exchange-listed ("listed") securities, ETP Holders also may rely on "Hard to Borrow" lists indicating NNM or listed securities that are difficult to borrow or unavailable for borrowing on settlement date to satisfy their affirmative determination requirements under this Rule, provided that: (i) any security restricted i.e., subject to NASD UPC Rule 11830, must be included on such a list; and (ii) the creator of the list attests in writing on the document or otherwise that any NNM or listed securities not included on the list are easy to borrow or are available for borrowing. ETP Holders are permitted to use Easy to Borrow or Hard to Borrow lists provided: (i) The information used to generate the list is less than 24-hours old; and (ii) the ETP Holder delivers the security on settlement date. Should an ETP Holder relying on an Easy to Borrow or Hard to Borrow list fail to deliver the security on settlement date, the Exchange will deem such conduct inconsistent with the terms of this Rule, absent mitigating circumstances such as a verifiable disruption or malfunction of an execution or communication system or such intervening act that may be demonstrated and adequately documented by the ETP Holder.*

*(4) Bona Fide Fully Hedged and Bona Fide Fully Arbitraged—In determining the availability of the exemption provided in paragraph (2)(b) above for "bona fide fully hedged" and "bona fide fully arbitraged" transactions, the Exchange may apply the following guidelines:*

*(A) Bona Fide Fully Hedged—The following transactions will be considered bona fide fully hedged: (i) Short a security and long a convertible debenture, preferred or other security which has a conversion price at or in the money and is convertible within ninety days into the short security; (ii) short a security and long a call which has a strike price at or in the money and which is exercisable within 90 calendar days into the underlying short security; (iii) short a security and long a position in warrants or rights which are exercisable within 90 days into the short security. To the extent that the long warrants or rights are "out of the money," then the short position will be exempt up to the market value of the long warrants or rights.*

*(B) Bona Fide Fully Arbitraged—The following transactions shall be considered bona fide fully arbitraged: (i) Long a security purchased in one market together with a short position from an offsetting sale of the same security in a different market at as nearly the same time as practicable for the purpose of taking advantage of a difference in price in the two markets; (ii) long a security which is without restriction other than the payment of money exchangeable or convertible within 90 calendar days of the purchase into a second security together with a short position from an off-setting sale of the second security at or about the same time for the purpose of taking advantage of a concurrent disparity in the prices of the securities.*

*(C) The transaction date of the short sale will govern when a fully hedged or fully arbitraged position exists.*

(d)–(f)—No change.

* * * * *

Rule 7.18(a)–(c)—No change.

(d) *Applicability.* The following Rules of the Corporation will not be applicable to transactions on the Corporation in Nasdaq Securities. 7.16 (*a, d and e*), 7.55–7.57.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments that it had received. The text of the statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of the statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

Proposed PCXE Rule 7.16(c)(1) ("Long Sales") states that no ETP Holder or associated person for whom the PCX serves as the Designated Examining Authority ("DEA") may accept a long sale order from any customer in any security (except exempt securities other than municipals) unless: (A) The ETP Holder has possession of the security; (B) the security is long in the customer's account with the ETP Holder; (C) the ETP Holder or associated person makes an affirmative determination that the customer owns the security and will deliver it in good deliverable form within three business days of the execution of the order; or (D) the security is on deposit in good deliverable form with an ETP Holder of the PCX, a member of a national securities exchange, a broker-dealer registered with the Commission, or any organization subject to state or federal banking regulations, and that instructions have been forwarded to that depository to deliver the securities against payment.

Proposed PCXE Rule 7.16(c)(2) ("Short Sales") provides that, with respect to customer short sales, no ETP Holder or associated person for whom the PCX serves as the DEA shall accept a "short" sale order for any customer in any security unless the ETP Holder or associated person makes an affirmative determination that the ETP Holder will receive delivery of the security from the customer or that the ETP Holder can borrow the security on behalf of the customer for delivery by settlement date. As proposed, the rule provides that this requirement does not apply to transactions in corporate debt securities.

The proposed rule further provides that no ETP Holder may effect a "short" sale for its own account in any security unless the ETP Holder or associated person makes an affirmative determination that the ETP Holder can borrow the securities or otherwise provide for delivery of the securities by the settlement date. The proposed rule provides that this requirement will not apply to transactions in corporate debt securities, to *bona fide* market making transactions by an ETP Holder in securities in which it is registered as a PCX market maker, or to transactions that result in fully hedged or arbitraged positions. The proposed rule further clarifies that transactions unrelated to normal market making activity, such as index arbitrage and risk arbitrage that are independent from an ETP Holder's market making functions, will not be considered *bona fide* market making activity. Similarly, *bona fide* market making would exclude activity that is related to speculative selling strategies of the ETP Holder or investment decisions of the firm and is disproportionate to the usual market making patterns or practices of the ETP Holder in that security.

Proposed PCXE Rule 7.16(c)(3) ("Affirmative Determination") provides that in order to satisfy the requirements for an "affirmative determination" for long sales, the ETP Holder or associated person must make a notation on the order ticket at the time the order is taken that reflects the conversation with the customer as to the present location of the securities in question, whether they are in good deliverable form, and the customer's ability to deliver them to the ETP Holder within three business

days. The proposed rule further provides that in order to satisfy the requirement for an "affirmative determination" for customer and proprietary short sales, the ETP Holder or associated person must keep a written record that includes: (i) If a customer assures delivery, the present location of the securities in question, whether they are in good deliverable form, and the customer's ability to deliver them to the ETP Holder within three business days; or (ii) if the ETP Holder or associated person locates the stock, the identity of the individual and firm contacted who offered assurance that the shares would be delivered or that were available for borrowing by settlement date and the number of shares needed to cover the short sale.

The proposed rule further provides that the manner by which an ETP Holder or associated person annotates compliance with the "affirmative determination" requirement discussed above (*e.g.*, marking the order ticket, recording inquiries in a log, etc.) is not specified by the Rule and, therefore, will be decided by each ETP Holder. As proposed, ETP Holders may rely on "blanket" or standing assurances (*i.e.*, "Easy to Borrow" lists) that securities will be available for borrowing on settlement date to satisfy their affirmative determination requirements under this Rule. For any short sales executed in NASDAQ National Market ("NNM") or national securities exchange listed ("listed") securities, the proposed rule provides that ETP Holders also may rely on "Hard to Borrow" lists indicating the NNM or listed securities that are difficult to borrow or unavailable for borrowing on settlement date to satisfy their affirmative determination requirements under this Rule, provided that (i) Any securities that are subject to NASD Uniform Practice Code Rule 11830 (*i.e.*, any Nasdaq securities that have a clearing short position of 10,000 shares or more and that are equal to at least one-half of one percent of the issue's total shares outstanding) must be included on such a list; and (ii) the creator of the list attests in writing on the document or otherwise that any NNM or listed securities not included on the list are easy to borrow or are available for borrowing. The proposed rule further provides that ETP Holders are permitted to use Easy to Borrow or Hard to Borrow lists provided that: (i) The information used to generate the list is less than 24-hours old; and (ii) the ETP Holder delivers the security on settlement date. Should an ETP Holder relying on an Easy to Borrow or Hard to Borrow list fail to deliver the security on settlement date, the PCX will deem such conduct inconsistent with the terms of this Rule, absent mitigating circumstances such as a verifiable disruption or malfunction of an execution or communication system or such intervening act that may be demonstrated and adequately documented by the ETP Holder.

Proposed Rule 7.16(c)(4) ("*Bona Fide* Fully Hedged and *Bona Fide* Fully Arbitraged") provides that the PCX may apply certain guidelines in determining the availability of the exemption provided for "*bona fide* fully hedged" and "*bona fide* fully arbitraged" transactions. Under the proposed rule, the following transactions would be considered *bona fide* fully hedged: (i) Short a security and long a convertible debenture, preferred, or other security that has a conversion price at or in the money and is convertible within ninety days into the short security; (ii) short a security and long a call that has a strike price at or in the money and which is exercisable within 90 calendar days into the underlying short security; (iii) short a security and long a position in warrants or rights that are exercisable within 90 days into the short security. To the extent that the long warrants or rights are "out of the money," then the short position will be exempt up to the market value of the long warrants or rights.

The proposed rule further provides that the following transactions shall be considered *bona fide* fully arbitraged: (i) Long a security purchased in one market together with a short position from an offsetting sale of the same security in a different market at as nearly the same time as practicable for the purpose of taking advantage of a difference in price in the two markets; (ii) long a security which is without restriction other than the payment of money exchangeable or convertible within 90 calendar days of the purchase into a second security together with a short position from an off-setting sale of the second security at or about the same time for the purpose of taking advantage of a concurrent disparity in the prices of the securities. The proposed rule provides that the transaction date of the short sale will govern when a fully hedged or fully arbitraged position exists.

The Commission notes that proposed Regulation SHO under the Act,[3] which the Commission recently published for public comment, would require short sellers in all equity securities to locate securities to borrow before selling and would impose strict delivery requirements on securities where many sellers have failed to deliver the securities.

2. Basis

The PCX believes that the proposal is consistent with Section 6(b) of the Act[4] and furthers the objectives of Section 6(b)(5)[5] of the Act in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, and protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The PCX 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 PCX neither solicited nor received written comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days after the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of that date if it finds the longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the PCX consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the amended proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–PCX–2002–66, and this file number should be included on the subject line

[3] *See* Securities Exchange Act Release No. 48709 (Oct. 28, 2003), 68 FR 62972 (Nov. 6, 2003).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

if e-mail is used. To help the Commission process and review your comments more efficiently, comments may be sent in hard copy or by e-mail, but not by both methods. 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 will also be available for inspection and copying at the principal office of the PCX. All submissions should be submitted by March 31, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04–5376 Filed 3–9–04; 8:45 am]

BILLING CODE 8010–01–P

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

**[Docket No. OST–1995–950]**

### Agency Information Collection Activity; Request for Extension Without Change of Currently Approved Information Collection

**AGENCY:** Office of the Secretary, DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35, as amended), this notice announces the Department of Transportation's (DOT) intention to request an extension without change for a currently approved information collection.

**DATES:** Comments on this notice must be received by May 10, 2004.

**ADDRESSES:** You may submit comments to Docket Number OST–1995–950. All submissions must include agency name and docket number and may be submitted by any of the following methods:

- *Web site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

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

**FOR FURTHER INFORMATION CONTACT:** Mr. Jack Schmidt, Competition and Policy Analysis Division (X–55), Office of Aviation Analysis, Office of the Secretary, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–5420.

**SUPPLEMENTARY INFORMATION:**

*Title:* Passenger Manifest Information.

*OMB Control Number:* 2105–0534.

*Type of Request:* Extension without change of a currently approved collection.

*Affected Public:* Air Carriers

*Abstract:* Public Law 101–604 (entitled the Aviation Security Improvement Act of 1990, or "ASIA 90," and later codified as 49 U.S.C. 44909) requires that certificated air carriers and large foreign air carriers collect the full name of each U.S. citizen traveling on flight segments to or from the United States and solicit a contact name and telephone number. In case of an aviation disaster, airlines would be required to provide the information to the Department of State and, in certain instances, to the National Transportation Safety Board. Each carrier would develop its own collection system. The Passenger Manifest Information; Final Rule (14 CFR part 243) was published in the **Federal Register**, Vol. 63., No. 32 (February 18, 1998). The rule was effective March 20, 1998.

*Respondents:* 23,245.

*Total Annual Burden on Respondents:* 1.05 million hours.

*Comments:* (a) Whether the continued collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the current information collection; (c) ways to enhance the quality, utility, and clarity of the information being collected; and (d) ways to minimize the burden of the collection of information of respondents, including the use of automated collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Issued in Washington, DC, on March 3, 2004.

**Randall D. Bennett,**

*Director, Office of Aviation Analysis.*

[FR Doc. 04–5347 Filed 3–9–04; 8:45 am]

BILLING CODE 4910–62–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Intent To Rule on Application (04–03–C–00–FNL) To Impose and To Use a Passenger Facility Charge (PFC) at the Fort Collins-Loveland Municipal Airport, Submitted by the City of Fort Collins and City of Loveland, CO

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

**ACTION:** Notice of intent to rule on application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to impose and use a PFC at the Fort Collins-Loveland Municipal Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR 158).

**DATES:** Comments must be received on or before April 9, 2004.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Craig Sparks, Manager; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 26805 E. 68th Avenue, Suite 224; Denver, CO 80249–6361.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. David C. Gordon, A.A.E., at the following address: 4900 Earhart Road, Loveland, CO 80538.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to the Fort Collins-Loveland Municipal Airport, under § 158.23 of part 158.

**FOR FURTHER INFORMATION CONTACT:** Mr. Christopher Schaffer, (303) 342–1258; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 26805 E. 68th Avenue, Suite 224;

[6] 17 CFR 200.30–3(a)(12).

Denver, CO 80249–6361. The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application (04–03–C–00–FNL) to impose and use a PFC at the Fort Collins-Loveland Municipal Airport, under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On March 3, 2004, the FAA determined that the application to impose a PFC submitted by the City of Fort Collins and the City of Loveland, Colorado, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than June 1, 2004.

The following is a brief overview of the application.

*Level of the proposed PFC:* $4.50.

*Proposed charge-effective date:* July 1, 2004.

*Proposed charge expiration date:* September 1, 2005.

*Total requested for use approval:* $75,778.

Brief description of proposed projects: South ramp rehabilitations; Snow Removal equipment building design; Master plan.

Class or classes of air carriers that the public agency has requested not be required to collect PFC's: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue, SW., Suite 315, Renton, WA 98055–4056.

In addition, in person may, upon request, inspect the application, notice, and other documents germane to the application in person at the Fort Collins-Loveland Municipal Airport.

Issued in Renton, Washington on March 3, 2004.

**David A. Field,**

*Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.*

[FR Doc. 04–5351 Filed 3–9–04; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Intent to Rule on Application 04–09–C–00–MFR to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Rogue Valley International-Medford Airport, Submitted by Jackson County, Rogue Valley International-Medford Airport, Medford, OR

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

**ACTION:** Notice of intent to rule on application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at Rogue Valley International-Medford Airport under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

**DATES:** Comments must be received on or before April 9, 2004.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. J. Wade Bryant, Manager; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW. Suite 250, Renton, Washington 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Bern E. Case, Airport Director, at the following address: 3650 Biddle Road, Medford, OR 97504.

Air Carriers and foreign air carriers may submitt copies of written comments previously provided to Rogue Valley International-Medford Airport, under § 158.23 of part 158.

**FOR FURTHER INFORMATION CONTACT:** Ms. Suzanne Lee-Pang, (425) 227–2654, Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW., Suite 250, Renton, Washington 98055–4056. The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application 04–09–C–00–MFR to impose and use PFC revenue at Rogue Valley International-Medford Airport, under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On March 3, 2004, the FAA determined that the application to impose and use the revenue from a PFC submitted by Jackson County, Rogue Valley International-Medford Airport, Medord, Oregon, was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later that June 4, 2004.

The following is a brief overview of the application.

*Level of the proposed PFC:* $450.

*Proposed charge effective date:* September 1, 2004.

*Proposed charge expiration date:* August 1, 2005.

*Total requested for use approval:* $27,542,553.

*Brief description of proposed projects:* Terminal Building and Area; Taxiway B, B2 and B3 Rehabilitation.

*Class or classes of air carriers which the public agency has requested not be required to collect PFC's:* Operations by Air Taxi/Commercial Operators when enplaning revenue passengers in limited, irregular, special service air taxi/commercial operations such as air ambulance services, student instruction, non-stop sightseeing flights that begin and end at the airport and are concluded within a 25 mile radius of the airport.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., Suite 315, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Rogue Valley International-Medford Airport.

Issued in Renton, Washington on March 3, 2004.

**David A. Field,**

*Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.*

[FR Doc. 04–5350 Filed 3–9–04; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA 02–13571]**

### Motor Vehicle Safety: Reimbursement Prior to Recall

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

**ACTION:** Request for public comment on a revision to an approved collection of information.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** notice with a 60-day comment period was published on October 16, 2002 (67 FR 63960).

**DATES:** Comments must be submitted on or before April 9, 2004.

**FOR FURTHER INFORMATION CONTACT:** George Person at the National Highway Traffic Safety Administration, Office of Defects Investigation, NVS–215, 400 Seventh Street, SW., Room 6240, Washington, DC 20590, phone 202–366–5210.

**SUPPLEMENTARY INFORMATION:**

*Title:* Defect and Noncompliance Notification.

*OMB Number:* 2127–0004.

*Type of Request:* Revision of currently approved collection.

*Abstract:* On October 17, 2002, NHTSA published a Final Rule (67 FR 64049) implementing section 6(b) of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act. Under this rule, motor vehicle and motor vehicle equipment manufacturers are required to include, in their programs to remedy a safety-related defect or a noncompliance with a Federal motor vehicle safety standard (safety recall), a plan for reimbursing owners for the cost of a remedy incurred within a reasonable time before the manufacturer's notification of the defect or noncompliance, and to notify owners affected by the safety recall of their eligibility for reimbursement. The rule allows manufacturers to submit general reimbursement plans that may be incorporated into defect and noncompliance information reports submitted to NHTSA pursuant to 49 CFR part 573 (part 573 reports) by reference rather than providing detailed plans to NHTSA for each safety recall. Specific information regarding a particular safety recall, such as the beginning and ending dates for the reimbursement period, must be submitted for each safety recall as part of the manufacturer's part 573 report. This revision adds the burden of providing this information to the currently approved burden of 15,844 hours for providing all other information about the defect or noncompliance required by 49 CFR part 573.

*Affected Public:* All manufacturers of motor vehicles and motor vehicle equipment that conduct safety recall campaigns would be required to comply with the reporting requirements. Based on recent history, we estimate that fewer than 500 safety recall campaigns will be conducted annually by no more than 170 different manufacturers.

*Estimated Total Annual Burden:* In order to provide the required information, manufacturers that conduct recalls must prepare a reimbursement plan and submit it to NHTSA. Ordinarily, we expect that this will consist of a general plan and supplemental information specific to each recall. We estimate that preparing the general plan would require 8 hours. Further, we estimate that no more than one hour would be required to include the additional information about a particular recall into individual Part 573 Reports. Since there are estimated to be 170 manufacturers that will submit 573 Reports annually and since there are estimated to be 500 recalls annually, the annual burden hours required to submit the plan would be 1,860 hours ((8x170)+(1x500)). Also, there will be additional burden associated with the third party information included in the notification letter sent to owners, since a sentence or two advising the owners of the possibility that they may be eligible for reimbursement must be added to the notification letter. We estimate that less than one hour per recall will be necessary or 500 hours (500x1) to provide this information annually. The total additional annual burden hours for this revision to the information collection is therefore 2,360 hours.

**ADDRESSES:** Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer.

*Comments Are Invited On:* Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC, on March 4, 2004.

**Kenneth N. Weinstein,**

*Associate Administrator for Enforcement.*

[FR Doc. 04–5352 Filed 3–9–04; 8:45 am]

BILLING CODE 4910–59–P

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

**[Docket No. RSPA–03–15733; Notice 2]**

### Pipeline Safety: Grant of Waiver; Portland Natural Gas Transmission System

**AGENCY:** Research and Special Programs Administration (RSPA); U.S. Department of Transportation (DOT).

**ACTION:** Notice; grant of waiver.

**SUMMARY:** PNGTS Operating Co., LLC, operator of the Portland Natural Gas Transmission System (PNGTS), requested a waiver of compliance with the regulatory requirements at 49 CFR 192.611 that require natural gas pipeline operators to confirm or revise the maximum allowable operating pressure of their natural gas pipelines after changes occur in Class location.

**SUPPLEMENTARY INFORMATION:**

#### Background

PNGTS Operating Co., LLC, operator of the Portland Natural Gas Transmission System, submitted a request to RSPA's Office of Pipeline Safety (RSPA/OPS) seeking a waiver of compliance with the regulatory requirements at 49 CFR 192.611 to confirm or revise the maximum allowable operating pressure of its natural gas pipeline after Class location changes occurred in areas associated with two sections of the pipeline totaling 595 feet in length in West Stewartstown, New Hampshire. In lieu of complying with the § 192.611 requirements, PNGTS proposed to conduct certain alternative risk control activities on the pipeline that exceed the minimum requirements of Part 192. These activities included performing internal inspections at six-year intervals on the entire 24-inch mainline, annual close-interval cathodic protection surveys on the waiver segments, a direct current voltage gradient survey on the waiver segments, direct assessment and repair of any anomalies identified by the inspections and electrical surveys, and more frequent ground and aerial surveillance patrols and instrumented leak surveys on the pipeline.

PNGTS requested a waiver of compliance with the requirements at 49

CFR 192.611 to confirm or revise the pipeline's MAOP for the referenced portions of its pipeline based on the following reasons:

1. The size of the geographic areas associated with the waiver segments is minimal. The area associated the two waiver segments is only 595 feet in length.

2. The construction activity that resulted in the Class location change was minimal and is not expected to expand further. The construction consisted of several mobile homes and two multi-tenant structures containing four units each on the perimeter of a tree farm. The multi-tenant units cross the 660-foot Class boundary by distances of only 0.7 to 22.8 feet. In addition, the mobile home park is now at capacity and is unlikely to expand due to the sloping terrain in the area and property ownership constraints.

3. The pipeline was constructed as recently as 1999 and hydro tested during the fourth quarter of 1998 to a pressure of 1,806 psig. Having been in service for only four years, the pipeline is nearly new and in excellent condition. No deficiencies were identified in a baseline close-interval cathodic protection survey conducted in 2000, and no anomalies were identified on or near the waiver segments in a baseline internal inspection conducted in 2002 with both magnetic flux leakage and geometry in-line inspection tools.

4. The pipeline's operating history has been trouble-free. No leaks have been identified anywhere on the PNGTS pipeline since it was put into service.

5. The pipeline is equipped with a satellite-linked supervisory control and data acquisition (SCADA) system, including pressure transmitters and mainline valves equipped with remote control actuators enabling PNGTS to identify and promptly mitigate any releases in the vicinity of the waiver segments should they occur.

6. The proposed alternative risk control activities would provide a margin of safety and environmental protection that equals or exceeds that of the measures required under § 192.611 in the absence of a waiver.

7. Granting the waiver would avoid the delivery interruptions and costs associated with excavating and replacing the pipe in the specified areas.

8. The proposed alternative risk control activities would benefit virtually the entire pipeline system, as opposed to only the 595 foot portion associated with the Class location change.

After reviewing the waiver request, RSPA/OPS published a notice inviting interested persons to comment on whether a waiver should be granted (Notice 1) (68 FR 66156; Nov. 25, 2003). RSPA/OPS stated that it was considering granting the requested waiver because of the minimal distance by which the structures cross the Class boundary, the age and condition of the pipeline, and the additional inspection and monitoring activities on which the waiver would be conditioned. No comments were received from the public in response to the notice.

For the reasons explained above and in Notice 1, and in light of the equivalent level of safety provided by the alternative risk control activities, RSPA/OPS finds that the requested waiver is not inconsistent with pipeline safety. Therefore, PNGTS's request for waiver of compliance with 49 CFR 192.611 is granted on the condition that PNGTS conducts the following activities:

1. Perform internal inspections on the entire 143.8 miles of 24-inch pipeline in 2008 and subsequent internal inspections at intervals not to exceed six years. The internal inspections must be performed using both magnetic flux leakage and geometry in-line inspection tools capable of detecting metal loss, dent-like deformations, and other integrity threats;

2. Perform annual close-interval cathodic protection surveys on the Class 3 sections of the pipeline, as well as an additional 1000 feet of the Class 1 or 2 pipe on both the upstream and downstream ends of these sections;

3. Perform annual direct current voltage gradient surveys on the Class 3 sections of the pipeline, as well as an additional 1000 feet of the Class 1 or 2 pipe on both the upstream and downstream ends of these sections;

4. Perform assessments and appropriate repairs of all anomalies or other indications of corrosion identified by the internal inspections and electrical surveys, regardless of the size or depth of the anomaly;

5. Perform weekly aerial patrols and quarterly ground road crossing patrols over the entire 143.8 miles of 24-inch pipeline. The ground road crossing patrols must include leak surveys on all Class 3 portions of the pipeline using appropriate instrumented leak detection equipment; and

6. Perform semi-annual leak surveys on the portion of the pipeline extending from Mile Post (MP) 0.0 to MP 6.80 using appropriate instrumented leak detection equipment.

Issued in Washington, DC, on March 4, 2004.

**Stacey L. Gerard,**

*Associate Administrator for Pipeline Safety.*

[FR Doc. 04–5353 Filed 3–9–04; 8:45 am]

BILLING CODE 4910–60–P

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Finance Docket No. 34400]**

### Sonoma-Marin Area Rail Transit District—Acquisition Exemption—Northwestern Pacific Railroad Authority

Sonoma-Marin Area Rail Transit District (SMART),[1] a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire the real estate and rail facilities and trackage from Northwestern Pacific Railroad Authority (NWPRA)[2] comprising a line of railroad that extends from Northwestern Pacific Railroad Company (NWP) milepost 68.2 at Healdsburg, CA, to Southern Pacific Transportation Company (SP) milepost 63.4 at Lombard Station, Napa County, CA, via Schellville (NWP milepost 40.6/SP milepost 72.59), a distance of approximately 66.85 miles. SMART indicates that it will take title subject to an easement for freight service, which was granted to North Coast Railroad Authority as part of NWPRA's acquisition in STB Finance Docket No. 32910, and to an operating agreement subsequently providing for service by Northwestern Pacific Railway Co., LLC (NWPY).[3] According to SMART, the purpose of this acquisition is to place the line in the ownership of an agency that is legally authorized to operate passenger rail service. SMART states that it will not be providing freight rail service. Rather, CFNR Operating Company, Inc. (CFNR)[4] and NWPY will

[1] SMART is a special district created pursuant to California Public Utilities Code Section 105000 *et seq.* to acquire and operate passenger service over the line.

[2] NWPRA acquired these assets in *Northwestern Pocific Railrood Authority—Acquisition Exemption—Former Northwestern Pacific Railroad Line from Southern Pocific Tronsportotion Compony ond Golden Gate Bridge, Highwoy ond Transportation District,* STB Docket Finance Docket No. 32910 (STB served May 17, 1996).

[3] NWPY acquired its authority pursuant to an operating agreement to lease and operate between Healdsburg and Schellville, CA. *See Northwestern Pocific Roilwoy Co., LLC—Leose ond Operation Exemption—North Coost Roilrood Authority, Northwestern Pocific Roilrood Authority and Golden Gote Bridge, Highway and Transportation District,* STB Finance Docket No. 33998 (STB served Feb. 6, 2001).

[4] CFNR acquired authority to operate freight rail service between Lombard and Schellville, CA. *See*

continue to be the carriers providing freight rail service over the line, and SMART will retain a residual common carrier obligation until such time as it petitions the Board for a change in status and the Board grants its petition. SMART certifies that its projected revenues as a result of this transaction will not exceed those that would qualify it as a Class III rail carrier.

A memorandum of understanding between NWPRA and SMART was executed on June 13, 2003. SMART reported that the parties intend to consummate the transaction on or about February 19, 2004.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34400, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Sally McGough, Deputy County Counsel, Sonoma County Counsel's Office, 575 Administration Drive, Room 105–A, Santa Rosa, CA 95403.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: March 2, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 04–5120 Filed 3–9–04; 8:45 am]

BILLING CODE 4915–01–P

*CFNR Operating Company, Inc.—Acquisition and Operation Exemption—Park Sierra Corp.*, STB Finance Docket No. 34199 (STB served May 23, 2002).

## UNITED STATES INSTITUTE OF PEACE

### Sunshine Act; Notice of Meeting

**DATE/TIME:** Thursday, March 25, 2004, 9:15 a.m.–5 p.m.

**LOCATION:** 1200 17th Street, NW., Suite 200, Washington, DC 20036.

**STATUS:** Open Session—Portions may be closed pursuant to subsection (c) of section 552(b) of Title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Pub. L. 98–525.

**AGENDA:** March 2004 Board Meeting; Approval of Minutes of the One Hundred Thirteenth (January 29, 2004) of the Board of Directors; Chairman's Report; President's Report; Committee Reports; Consideration of fellowship applications and consideration of list of recommended Grants; Other General Issues.

**FOR FURTHER INFORMATION CONTACT:** Tessie Higgs, Executive Office, Telephone: (202) 429–3836.

Dated: March 5, 2004.

**Charles E. Nelson,**

*Vice President, United States Institute of Peace.*

[FR Doc. 04–5506 Filed 3–8–04; 1:11 pm]

BILLING CODE 6820–AR–M

# Corrections

Federal Register
Vol. 69, No. 47
Wednesday, March 10, 2004

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Docket No. FAA–2003–15979; Airspace Docket No. 03–AEA–10]**

### Establishment of Class E Airspace; Lawrenceville, VA

*Correction*

In rule document 04–2192 appearing on page 5014 in the issue of February 3, 2004 make the following correction:

**§71.1 [Corrected]**

In §71.1, in the second column, under the heading "**AEA VA E5, Lawrenceville, VA [NEW]**" the third line, should read "(Lat. 36°46′22″ N., long. 77°47′39″ W.)".

[FR Doc. C4–2192 Filed 3–9–04; 8:45 am]
BILLING CODE 1505–01–D

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Docket No. FAA–2003–16282; Airspace Docket No. 03–AEA–06]**

### Amendment of Class E Airspace; Philadelphia, PA

*Correction*

In rule document 04–2193 beginning on page 5014 in the issue of February 3, 2004, make the following correction:

**§71.1 [Corrected]**

On page 5015, in §71.1, in the second column, in the first full paragraph, in the 11th line, "713°" should read "173°".

[FR Doc. C4–2193 Filed 3–9–04; 8:45 am]
BILLING CODE 1505–01–D


Federal Register

Wednesday,
March 10, 2004

Part II

# The President

Federal Register
Vol. 69, No. 47
Wednesday, March 10, 2004

# Presidential Documents

Title 3—

The President

**Proclamation 7760 of March 5, 2004**

## Irish-American Heritage Month, 2004

**By the President of the United States of America**

**A Proclamation**

Millions of Americans trace their ancestry to Ireland's shores. During Irish-American Heritage Month, we recognize these proud citizens and their important contributions to America.

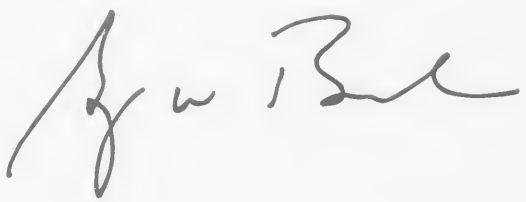
Irish Americans have helped settle the American frontier, build our cities, and defend our homeland. Through their service in government and the military, they have helped to uphold our democracy and advance liberty and peace around the world. Through their dedication to faith and family, they have strengthened our communities and enriched our Nation's character.

The names of Irish Americans who have helped make America great are familiar. Davy Crockett and Sam Houston helped settle the West. As Archbishop, John Cardinal O'Connor served the people of New York with conviction and compassion. President John Kennedy led America with steadfast determination during a time of great challenge.

These and millions of other Irish Americans have made America better and stronger. This month, we celebrate the enormous gifts Irish Americans have given this Nation.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim March 2004 as Irish-American Heritage Month. I call upon all Americans to observe this month by celebrating the contributions of Irish Americans to our Nation.

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



[FR Doc. 04–5577
Filed 3–9–04; 8:45 am]
Billing code 3195–01–P

# Presidential Documents

**Proclamation 7761 of March 5, 2004**

## Women's History Month, 2004

**By the President of the United States of America**

**A Proclamation**

During Women's History Month, we celebrate the many accomplishments of our Nation's women.

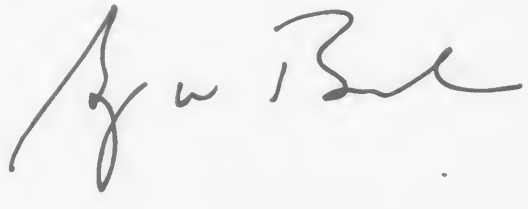
Women are leaders in American business, government, law, science, medicine, the arts, education, and many other fields. As mothers, sisters, and daughters, they bring compassion and integrity to our communities and help to teach our children the values that make our country great.

Women today are following in the footsteps of pioneers such as Sarah Pierce, Emma Willard, Catherine Beecher, and Mary Lyon, who helped open the doors to higher education for women in our country. Their vision and determination changed America forever. Women today also join a long tradition of defending our Nation. During the Revolutionary War, Margaret Cochran Corbin fought as a gunner and was severely wounded at the battle of Fort Washington. Today, more than 200,000 women are serving in our Nation's Armed Forces and working to defend America and advance peace and freedom. We are grateful for their sacrifice and for the military families that support them.

This month, we celebrate the many ways women strengthen and enrich America.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim March 2004 as Women's History Month. I call upon all Americans to observe this month with appropriate ceremonies and activities.

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



[FR Doc. 04–5578
Filed 3–9–04; 8:45 am]
Billing code 3195–01–P

## Presidential Documents

**Proclamation 7762 of March 5, 2004**

# Save Your Vision Week, 2004

**By the President of the United States of America**

**A Proclamation**

Millions of Americans enjoy healthy vision. Yet, each year, many of our citizens suffer from vision loss that could have been prevented or reversed with effective detection and appropriate intervention. Commemorating Save Your Vision Week reminds us of the importance of including eye care as part of a regular preventive health routine.

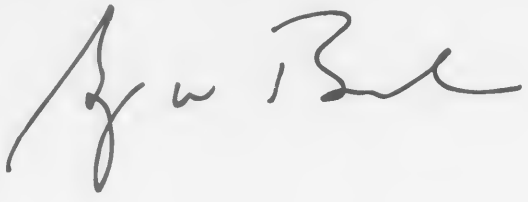
Eating healthy foods, wearing safety glasses, and avoiding the harmful effects of the sun's ultraviolet rays are ways to help to keep our eyes healthy. Regular, comprehensive exams are also important to maintain good vision and eye health. For children, regular eye exams can help parents ensure that their children's vision is developing normally and can identify a problem before it becomes more serious. For adults, eye care professionals can detect glaucoma and eye damage from diabetes in the early stages of progression, thereby preventing further harm. Diabetes can seriously affect vision in addition to general health. An estimated 40 to 45 percent of all people diagnosed with diabetes will develop some degree of diabetic retinopathy, a leading cause of new cases of blindness in working-age Americans that often presents few warning signs and no pain. Other eye diseases such as glaucoma may cause vision damage and eventual blindness without the individual being aware of a problem.

The Department of Health and Human Services is working to identify opportunities to improve the health of all Americans through Healthy People 2010, a national disease prevention plan. This plan includes the Healthy Vision 2010 Initiative, which is addressing many of the challenges posed by the loss or impairment of vision.

The Congress, by joint resolution approved December 30, 1963, as amended (77 Stat. 629; 36 U.S.C. 138), has authorized and requested the President to proclaim the first week in March of each year as "Save Your Vision Week." During this week, I encourage all Americans to learn more about ways to prevent eye problems for themselves and to help others maintain the precious gift of sight.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim March 7 through March 13, 2004, as Save Your Vision Week. I urge all Americans to participate by making eye care and eye safety an important part of their lives and to get regular eye examinations. I also encourage eye care professionals, teachers, the media, and all public and private organizations dedicated to preserving eyesight to join in activities that will raise awareness of the measures all citizens can take to protect vision.

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



[FR Doc. 04–5579
Filed 3–9–04; 8:45 am]
Billing code 3195–01–P

# Presidential Documents

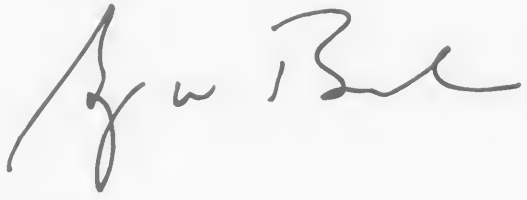
**Memorandum of March 5, 2004**

## Delegation of Certain Reporting Authority

**Memorandum for the Administrator of the National Aeronautics and Space Administration**

By the authority vested in me as President by the Constitution and the laws of the United States, including section 301 of title 3, United States Code, I hereby delegate to you the functions conferred upon the President by section 206 of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2476), to provide the specified report to the Congress. Nothing in this delegation shall be construed to impair or otherwise affect the authority of the Director of the Office of Management and Budget with respect to budget, administrative, and legislative proposals.

You are authorized and directed to publish this memorandum in the **Federal Register**.



THE WHITE HOUSE,
*Washington, March 5, 2004.*

[FR Doc. 04–5580
Filed 3–9–04; 8:45 am]
Billing code 7510–01–M

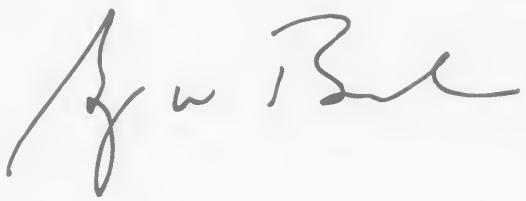
## Presidential Documents

**Notice of March 8, 2004**

### Notice of Intention to Enter Into a Free Trade Agreement With Morocco

Consistent with section 2105(a)(1)(A) of the Trade Act of 2002, I have notified the Congress of my intention to enter into a free trade agreement with the Kingdom of Morocco.

Consistent with section 2105(a)(1)(A) of that Act, this notice shall be published in the **Federal Register**.



THE WHITE HOUSE,
*Washington, March 8, 2004.*

[FR Doc. 04–5581
Filed 3–9–04; 8:45 am]
Billing code 3190–01–M


Federal Register

Wednesday,
March 10, 2004

Part III

# Department of Housing and Urban Development

24 CFR Part 200
FHA Inspector Roster; Final Rule

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**24 CFR Part 200**

**[Docket No. FR–4720–F–02]**

**RIN 2502–AH76**

## FHA Inspector Roster

**AGENCY:** Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

**ACTION:** Final rule.

**SUMMARY:** This rule establishes the regulations that will govern the Federal Housing Administration (FHA) Inspector Roster (Roster). The regulations provide for placement of inspectors on the Roster, recertification of Roster inspectors, and removal of inspectors from the Roster. The rule also identifies when a mortgagee must use an inspector listed on the Roster.

**DATES:** *Effective Date:* April 9, 2004.

**FOR FURTHER INFORMATION CONTACT:** Joyce Johnson, Valuation Manager, Office of Single Family Program Development, Office of Housing, Room 9266, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone (202) 708–2121 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

**SUPPLEMENTARY INFORMATION:**

### I. Background

On October 10, 2002, HUD published a proposed rule (67 FR 63198) to govern the FHA Inspector Roster (Roster or FHA Roster) and provide eligibility standards, procedures, and requirements for applicants to be placed on the Roster. In addition to demonstrating professional experience and familiarity with HUD requirements, the proposal required an applicant for the Roster to provide verification of having passed HUD's comprehensive examination for inspectors, after such an examination becomes available. This rule adopts the proposed rule as final, with only minor editorial changes, such as the replacement of the term "lender" with the term "mortgagee" for consistency.

All inspectors currently listed by HUD must be recertified according to the new procedures and requirements in order to maintain their placement on the Roster and their eligibility to inspect properties that will secure mortgages insured by FHA. Current inspectors will be permitted to conduct inspections for six months after this rule becomes effective, but during that six-month period they must apply and be approved for placement on the FHA Roster to continue to qualify as FHA Roster inspectors after that six-month period has ended.

This rule also identifies when mortgagees must use an FHA Roster inspector. The FHA requires three inspections for new construction when the local jurisdiction in which the property is located does not perform inspections and has not issued both a building permit prior to the start of construction and a certificate of occupancy or equivalent document. If an FHA appraiser appraises the newly constructed property after an FHA Roster inspector has performed two inspections and the construction is 100 percent completed, the final inspection by an FHA Roster inspector is not necessary. In the case of existing construction, FHA Roster inspectors must be used where structural repairs have been made requiring an inspection and this inspection is not performed by a licensed, bonded, and registered engineer; a licensed home inspector; or other person specifically registered or licensed to conduct such inspections.

Finally, the rule also includes a procedure for removing an FHA Roster inspector from the Roster for cause, generally for not complying with FHA requirements or procedures.

### II. Summary of Public Comments

HUD received three public comments on the October 10, 2002 proposed rule, for which the public comment period closed on December 9, 2002. Of the three comments received, two were generally in favor of the certification program, and the third believed the program to be unnecessary. Of the two commenters that believed the program may be useful, both had suggestions for changes to the proposed rule. The following discussion presents HUD's responses to the issues and questions raised by the comments. The discussion of comments is organized according to the rule section that is addressed by the comment.

*Section 200.170 Purpose of FHA Roster Inspector*

*Comment: What Will Happen in Areas Where There are Few Inspectors?* The rule does not address the question of what will happen in areas, particularly rural and isolated communities, where there are not any or not enough inspectors available. Also areas where there are no building permits or local inspections may suffer from a lack of inspectors. HUD should allow FHA Roster appraisers to make these inspections where there is an inadequate number of inspectors and if there are no appraisers or inspectors, HUD should allow state licensed or certified appraisers to perform that function.

*HUD Response:* Because FHA does not require the use of a Roster inspector for all inspections, FHA is confident there are sufficient numbers of Roster inspectors to support FHA activities. For new construction, FHA does not require an inspection by a Roster inspector if the local jurisdiction where the property is located performs the inspection and issues a building permit and certificate of occupancy (or equivalent). Similarly, for existing construction in which the repairs are not structural in nature, FHA permits mortgagees to choose whether to have the FHA Appraiser who completes the appraisal report to determine whether repairs were completed in compliance with HUD guidelines. Alternatively, for inspections of repaired properties that require architectural expertise (structural or basic system repairs), the final rule does require mortgagees to use an FHA Roster inspector.

*Section 200.171 Placement on the Inspector Roster*

*Comment: HUD Needs to Advertise the Benefits of Becoming Certified.* Because the new testing requirement would discourage some inspectors from completing the requirements to become certified, HUD should undertake a campaign to increase awareness of the benefits of becoming certified so that inspectors will be encouraged to complete the process.

*HUD Response:* The benefits of becoming certified as an FHA Roster inspector are outside the scope and focus of this rule. The rule is intended to regulate and improve the quality of certified FHA Roster inspectors. HUD will consider revision to the FHA Roster inspector web page on HUD's website *www.hud.gov* to provide additional program information and assistance in completing the requirements to become certified.

*Comment: State Certification Requirement Is Excessive.* The requirement that Roster inspectors have state certification, if certification is required by the state in which the Roster inspector will operate, is excessive and at odds with what is required for being a qualified inspector. For example, under some circumstances, a mortgagee can accept a property based on the review of an FHA appraiser, who is not required to have training or background in conducting inspections. Also,

building permits and certificates of occupancy may be used in lieu of an inspection by an FHA Roster inspector. Why is HUD proposing to test and, in some areas, require licensing of FHA Roster inspectors if such exceptions are permitted?

*HUD Response:* HUD disagrees that adoption of a state certification requirement, if the state has mandated certifications, is an excessive requirement. HUD believes that local problems require local solutions and that if the state has made a conscious effort to establish criteria for inspectors, HUD should not adopt a lesser standard.

This rule recognizes but does not otherwise address the exceptions, which allow the mortgagee to use FHA appraisers to determine if certain repairs were completed in compliance with HUD's guidelines, as well as the use of local government building and certificate of occupancy inspectors. Rather, this rule is limited to those instances in which the mortgagee must choose an FHA Roster inspector due to the nature and complexity of the inspections. This rule would require appraisers to be listed on the FHA Roster when inspecting new construction that is less than 100 percent complete, or where complex repairs and improvements require inspectors with architectural expertise (structural or basic system repairs), or where the applicant is located in a state that requires such licensing. Since FHA Roster inspectors are primarily used when new construction is involved, the requirement for state licensure acts to ensure that participants are familiar with state and local building codes.

*Comment: Rule Should Grandfather-in All Inspectors Currently on FHA Roster Inspector List.* The rule should use a grandfather clause to recognize all the currently listed inspectors as having met the recertification requirements. In states or areas where engineers or architects have had to meet certification and board requirements, HUD should allow them also to be grandfathered onto the Roster. If a person is allowed to utilize the grandfather clause, HUD should exempt that person from the examination, if that person completes a HUD-provided continuing education program on HUD's handbooks.

*HUD Response:* FHA's goal is to ensure that inspectors on FHA's Roster have detailed FHA program knowledge and are aware of recent program changes. As FHA's single family programs are continuously revised, updated, and enhanced, keeping up with the latest program revisions is one of the key responsibilities of FHA Roster inspectors. The recertification of all HUD inspectors currently listed is intended to ensure that all FHA Roster inspectors are up to date on FHA program guidelines and current with state and local building codes, ordinances, and restrictions.

*Section 200.172 Removal From the Inspector Roster*

*Comment: Procedures Are Already in Place for Removal of Inspectors. New Procedures Not Needed.* There are procedures in effect already that are meant to remove inspectors who are not performing their duties. These rules and regulations need to be enforced rather than creating new ones.

*HUD Response:* This final rule will provide FHA clear authority to remove FHA Roster inspectors from the Roster and prevent their further participation in FHA programs. The final rule will also ensure closer monitoring of participating FHA Roster inspectors and help HUD maintain experienced and knowledgeable inspectors on its Roster.

## III. Findings and Certifications

*Paperwork Reduction Act*

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), and assigned OMB control number 2502–0548. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

*Impact on Small Entities*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this rule and in so doing certifies that this rule would not have a significant economic impact on a substantial number of small entities. The rule establishes uniform requirements and procedures for being placed on or removed from HUD's new FHA inspector Roster. In doing so, it does not affect the amount of HUD-related business that will continue to be available for inspectors. This rule does, however, replace the existing system under which local HUD offices periodically select inspectors competitively according to standards that vary from office to office with nationwide, uniform requirements that open the doors of participation with HUD to all inspectors who qualify. The rule also clearly defines the terms for continued participation with HUD and provides a uniform, expeditious, and equitable procedure for removal from the Roster. As such, the rule results in an industry-wide and governmental benefit in that it clarifies the terms of the relationship between HUD and its fee inspectors.

*Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This rule does not impose any federal mandate on any state, local, or tribal government or the private sector within the meaning of the UMRA.

*Environmental Impact*

This final rule does not direct, provide for assistance or loan or mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this final rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

*Federalism Impact*

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

*Executive Order 12866, Regulatory Planning and Review*

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled "Regulatory Planning and Review"). OMB determined that this rule is a "significant regulatory action," as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made to the rule subsequent to its submission to OMB

are identified in the docket file, which is available for public inspection in the Regulations Division, Room 10276, Office of the General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

**List of Subjects in 24 CFR Part 200**

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Home improvement, Housing standards, Incorporation by reference, Lead poisoning, Loan programs—housing and community development, Minimum property standards, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

■ Accordingly, HUD amends 24 CFR part 200 as follows:

## PART 200—INTRODUCTION TO FHA PROGRAMS

■ 1. The authority citation for 24 CFR part 200 continues to read as follows:

**Authority:** 12 U.S.C. 1702–1715z–21; 42 U.S.C. 3535(d).

■ 2. In subpart F, add §§ 200.170 through 200.172, under a new undesignated center heading "FHA Inspector Roster" to read as follows:

## Subpart F—Placement and Removal Procedures for Participation in FHA Programs

### FHA Inspector Roster

Sec.



**§ 200.170 FHA Inspector Roster; Mortgagee and Inspector requirements.**

(a) *General.* The FHA Inspector Roster (Roster) is a list of the inspectors selected by FHA as eligible to determine if the construction quality of a one- to four-unit property is acceptable as security for an FHA insured loan.

(b) *Mortgagee requirement.* Only an inspector included on the Roster may be selected by a mortgagee to determine if the construction quality of a property is acceptable as security for an FHA insured loan, as follows:

(1) For new construction, the FHA requires three inspections by Roster inspectors; and

(2) For existing construction, the FHA requires an inspection by a Roster inspector where structural repairs have been made requiring an inspection and this inspection is not performed by a licensed, bonded, and registered engineer; a licensed home inspector; or other person specifically registered or licensed to conduct such inspections.

(3) The requirements of paragraph (b)(1) of this section do not apply if:

(i) The local jurisdiction where the newly constructed one- to four-unit property is located performs the inspections and issues a building permit prior to construction and a certificate of occupancy or equivalent document; or

(ii) When the new construction is 100 percent complete, an appraiser who is on FHA's Appraiser Roster appraises the property and an FHA Roster inspector has already performed two inspections.

(c) *Inspector requirement.* To be eligible to conduct inspections as required by paragraph (b) of this section, an inspector must be listed on the Roster, except that any inspector already otherwise listed by HUD as eligible to conduct inspections as of April 9, 2004, may conduct inspections until October 12, 2004, without being listed on the Roster.

(d) *Effect of placement on the Roster.* Placement of an inspector on the Roster only qualifies an inspector to be selected by a mortgagee to determine if the construction quality of a property is acceptable as security for an FHA-insured loan. Placement on the Roster does not guarantee that any mortgagee will select an inspector. Use of an inspector placed on the Roster also does not create or imply any warranty or endorsement concerning the inspected property by HUD to a prospective homebuyer or any other party.

**§ 200.171 Placement on the Inspector Roster.**

(a) *Application.* To be considered for placement on the Roster, an inspector must apply to HUD using an application (or materials) in a form prescribed by HUD.

(b) *Eligibility.* To be eligible for placement on the Roster, an inspector must demonstrate the following to HUD:

(1) A minimum of three years experience in one or more construction-related fields;

(2) Possession of an inspector's state or local license or certification, if licensing or certification is required by the state or local jurisdiction in which the inspector will operate;

(3) Certification that the applicant inspector has read and fully understands the inspection requirements, including any update to those requirements, of:

(i) HUD Handbook 4905.1 REV–1 (Requirements for Existing Housing, One to Four Family Units);

(ii) HUD Handbook 4910.1 (Minimum Property Standards for Housing);

(iii) HUD Handbook 4145.1 REV–2 (Architectural Processing and Inspections for Home Mortgage Insurance);

(iv) HUD Handbooks 4150.1 and 4150.2 (Valuation Analysis for Home Mortgage Insurance);

(v) HUD Handbook 4930.3G (Permanent Foundations Guide for Manufactured Housing);

(vi) The applicable local, state, or Council of American Building Officials (CABO) code; and

(vii) The HUD requirements at 24 CFR 200.926; and

(4) Verification that the inspector has taken and passed HUD's comprehensive examination for inspectors, after such an examination becomes available. Inspectors who are included on the Roster on the date when the requirement for the examination becomes effective have until six months following that date to pass the comprehensive exam. Failure to pass the examination by the deadline date constitutes cause for removal under § 200.172.

**§ 200.172 Removal from the Inspector Roster.**

(a) *Cause for removal.* HUD may remove an inspector from the Roster for any cause that HUD determines to be detrimental to HUD or its programs. Cause for removal includes, but is not limited to:

(1) Poor performance on a HUD quality control field review;

(2) Failure to comply with applicable regulations or other written instructions or standards issued by HUD;

(3) Failure to comply with applicable civil rights requirements;

(4) Being debarred, suspended, or subject to a limited denial of participation;

(5) Misrepresentation or fraudulent statements;

(6) Failure to retain standing as a state or local government licensed or certified inspector, where such a license or certificate is required;

(7) Failure to respond within a reasonable time to HUD inquiries or requests for documentation; or

(8) Being listed on HUD's Credit Alert Interactive Voice Response System (CAIVRS).

(b) *Procedure for removal.* An inspector that is debarred, suspended, or subject to a limited denial of participation will be automatically removed from the Roster. In all other cases, the following procedure for removal will be followed:

(1) HUD will give the inspector written notice of the proposed removal.

The notice will state the reasons for and the duration of the proposed removal.

(2) The inspector will have 20 days after the date of the notice (or longer, if provided in the notice) to submit a written response appealing the proposed removal and requesting a conference. A request for a conference must be in writing and must be submitted with the written response.

(3) A HUD official will review the appeal and send a response either affirming, modifying, or canceling the removal. The HUD official will not be someone who was involved in HUD's initial removal decision. HUD will respond with a decision within 30 days after receiving the appeal or, if the inspector has requested a conference, within 30 days after the completion of the conference. HUD may extend the 30-day period by providing written notice to the inspector.

(4) If the inspector does not submit a timely written response, the removal will be effective 20 days after the date of HUD's initial removal notice (or after a longer period provided in the notice). If a written response is submitted, and the removal decision is affirmed or modified, the removal will be effective on the date of HUD's notice affirming or modifying the initial removal decision.

(c) *Placement on the list after removal.* An inspector who has been removed from the Roster may apply for placement on the Roster (in accordance with § 200.171) after the period of the inspector's removal from the Roster has expired. An application will be rejected if the period for the inspector's removal from the list has not expired.

(d) *Other action.* Nothing in this section prohibits HUD from taking such other action against an inspector, as provided in 24 CFR part 24, or from seeking any other remedy against an inspector available to HUD by statute or otherwise.

Dated: February 24, 2004.

**John C. Weicher,**

*Assistant Secretary for Housing-Federal Housing Commissioner.*

[FR Doc. 04–5313 Filed 3–9–04; 8:45 am]

BILLING CODE 4210–27–P


Federal Register

Wednesday,
March 10, 2004

Part IV

# Department of Housing and Urban Development

24 CFR Part 203
Eligibility of Adjustable Rate Mortgages; Final Rule

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**24 CFR Part 203**

**[Docket No. FR–4745–F–02]**

**RIN 2502–AH84**

## Eligibility of Adjustable Rate Mortgages

**AGENCY:** Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Final rule.

**SUMMARY:** Pursuant to a recent statutory revision, this rule makes available new adjustable rate mortgage (ARM) products for HUD-insured single family homes tailored to the needs of borrowers. This rule also makes provisions for the frequency and amount of interest rate changes for these new products and for pre-loan disclosure requirements. This final rule follows publication of a March 11, 2003, proposed rule. In accordance with statutory authority and the public comments received, this rule implements the proposed rule without change; that is, it provides for seven- and ten-year ARMs adjustable annually by up to two percentage points, and for one-, three, and five-year ARMs adjustable annually by up to one percentage point. The lifetime cap on adjustments for seven- and ten-year ARMs is set at six percentage points.

**DATES:** Effective Date: April 9, 2004.

**FOR FURTHER INFORMATION CONTACT:** James Beavers, Director, Home Mortgage Insurance Division, Office of Single Family Housing, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone (202) 708–2121. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

**SUPPLEMENTARY INFORMATION:**

### A. Background

On March 11, 2003 (68 FR 11730), HUD published for comment a proposed rule entitled "Eligibility of Adjustable Rate Mortgages," which proposed to implement section 251 of the National Housing Act, 12 U.S.C. 1715z–16 (section 251) as revised by the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2002 (Pub. L. 107–73, approved November 26, 2001) (FY 2002 HUD Appropriations Act). This rule, following statutory authority, proposed to permit new categories of hybrid Adjustable Rate Mortgages (ARMs). ARMs are mortgages that remain at a fixed rate for a certain period of time and then adjust their rates.

Section 206 of the FY 2002 HUD Appropriations Act added additional categories of ARMs to the pre-existing one-year ones (which capped adjustments at one percentage point). Under this statutory revision, which adds a new subsection (d) to section 251, the Secretary may insure ARMs on single family properties that have interest rates that are fixed for the first three years or more of the mortgage term, that are thereafter adjusted annually, and are not necessarily limited to adjustments of one percentage point if the initial interest rate remains fixed for more than five years.

Pursuant to the FY 2002 statutory revisions, HUD also proposed new pre-loan disclosure requirements. Under the statute, HUD must require mortgage lenders to make available to the mortgagor a written explanation of the features of an ARM at the time the mortgagor applies for an ARM under this section. This explanation must be consistent with the disclosure requirements under the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*, applicable to variable rate mortgages secured by a principal dwelling.

HUD also proposed amending 24 CFR 203.49(h) and redesignating it 24 CFR 203.49(i) to eliminate the exclusionary cross-reference to mortgage insurance for disaster victims, 24 CFR 203.18(e). The effect of this change would be to permit insurance of ARMs under 203.18(e). Finally, technical revisions would be made to § 203.49(i), which is redesignated as § 203.49(j) in this final rule.

Other portions of 24 CFR 203.49 are not affected by this rulemaking.

### B. Discussion of Public Comments

The public comment period for the proposed rule closed on May 12, 2003. HUD received four comments on the proposed rule. Commenters were generally supportive of the additional ARM options, but asked for certain changes in the rule or the underlying legislation. Comments were received from mortgage lenders, two banking associations, and an association of realtors.

*Comment:* One commenter stated that consideration should be given to using a different index, specifically, the London Interbank Offered Rate (LIBOR) index, as the basis for the interest rate.

*Response:* HUD recognizes that LIBOR is used for a host of conventional mortgage products, and is well recognized in the mortgage industry. Nevertheless, the Federal Housing Administration (FHA), being an agency of the United States Government, is best served by retaining a domestic index available from the Federal Reserve Board.

*Comment:* This commenter also stated that a greater number of ARM loans should be permitted. The commenter suggested that an increase for ARMs above the limit of 30 percent of the aggregate amount of loans insured should be considered.

*Response:* The 30 percent of aggregate limitation is statutory (*see* section 251(c) of the National Housing Act, 12 U.S.C. 1715z–16(c)). Therefore, HUD cannot increase it by regulation.

*Comment:* Three commenters stated that the one percent cap on adjustments for five-year ARMs would not work as a practical matter, and each stated its support for pending legislation (the "Access to Affordable Mortgages Act," H.R. 1443 of the 108th Congress) to change this cap to two percent. One of these commenters noted, "In the conventional mortgage markets, lenders do not originate 5/1 ARMs with one percent annual caps. A maximum annual increase of one percent * * * does not provide sufficient interest rate flexibility to enable lenders to offer 5/1 ARMs at a rate below the traditional 30-year fixed rate mortgage." Another commenter made a similar statement and added that as a result "the program will likely not accomplish its intended purpose: to offer FHA borrowers a full range of hybrid ARM loans with starting interest rates lower than those on 30-year fixed-rate mortgages." Another of these commenters also stated that a one percent adjustment does not allow sufficient interest rate flexibility and that legislation raising the annual cap on five-year ARMs will "make ARMs a more available, affordable alternative for homebuyers." One commenter also mentioned without discussion that the lifetime cap for five-year ARMs should be raised to six percentage points.

*Response:* The one percentage point cap on adjustments for ARMs of five or fewer years is based on statutory authority current at the time the proposed rule was published. (*See* section 251(d) of the National Housing Act, 12 U.S.C. 1715z–16(d)(2003).) HUD acknowledges that there is now statutory authority to raise the annual and life-of-loan adjustment caps on five-year ARMs under section 301 of the FHA Multifamily Loan Limit Adjustment Act of 2003, Pub. L. 108–186. HUD will consider changing the

adjustment caps in a future rulemaking proceeding.

*Comment:* Two commenters stated that further changes to HUD-insured ARMs should be by mortgagee letter. These commenters stated that if a legislative change is made allowing the adjustments in five-year ARMs to be capped at two percent, the change should be implemented by Mortgagee Letter to avoid the time-consuming rulemaking process.

*Response:* HUD believes that changes to the adjustment rates of ARMs should be done through rulemaking.

**C. This Final Rule**

In view of the general support for additional ARM products and the fact that the rule follows statutory authority, this final rule implements the proposed rule without substantive change.

**Findings and Certifications**

*Regulatory Flexibility Act*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule permits greater flexibility in HUD-insured ARMs, thus providing more products for potential homebuyers.

*Environmental Impact*

A Finding of No Significant Impact with respect to the environment was made at the proposed rule stage in accordance with HUD regulations at 24 CFR part 50, which implement Section 102(2)(C) of the National Environmental Policy Act of 1969. That finding remains available for public inspection between 8 a.m. and 5 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410–0500.

*Executive Order 13132, Federalism*

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

*Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This final rule does not impose any federal mandates on any state, local, or tribal government or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995.

*Executive Order 12866, Regulatory Planning and Review*

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled "Regulatory Planning and Review"). OMB determined that this rule is a "significant regulatory action," as defined in section 3(f) of the Executive Order (although not economically significant, as provided in section 3(f)(1) of the Executive Order). Any changes made to the rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Office of the Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

*Catalog of Federal Domestic Assistance*

The Catalog of Federal Domestic Assistance numbers applicable to this rule are 14.108, 14.117, and 14.119.

**List of Subjects in 24 CFR Part 203**

Hawaiian Natives, Home improvement, Indians—lands, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

■ For the reasons stated in the preamble, HUD amends 24 CFR part 203 as follows:

## PART 203—SINGLE FAMILY MORTGAGE INSURANCE

■ 1. The authority citation for 24 CFR part 203 is revised to read as follows:

**Authority:** 12 U.S.C. 1709, 1710, 1715b, 1715z–16, and 1715u; 42 U.S.C. 3535(d).

■ 2. § 203.49 is revised as follows:

■ a. Redesignate paragraphs (a) through (j) as paragraphs (b) through (k) respectively;

■ b. Add a new paragraph (a); and

■ c. Revise newly designated paragraphs (d), (f), (g), (i), and (j).

The additions and revisions read as follows:

**§ 203.49 Eligibility of adjustable rate mortgages.**

* * * * *

(a) *Types of mortgages insurable.* The types of adjustable rate mortgages that are insurable are those for which the interest rate may be adjusted annually by the mortgagee, beginning after one, three, five, seven, or ten years from the date of the mortgagor's first debt service payment.

* * * * *

(d) *Frequency of interest rate changes.* (1) The interest rate adjustments must occur annually, calculated from the date of the mortgagor's first debt service payment, except that, for these types of mortgages, the first adjustment shall be no sooner or later than the following:

(i) One-year adjustable rate mortgages—no sooner than 12 months or later than 18 months;

(ii) Three-year adjustable rate mortgages—no sooner than 36 months or later than 42 months;

(iii) Five-year adjustable rate mortgages—no sooner than 60 months or later than 66 months;

(iv) Seven-year adjustable rate mortgages—no sooner than 84 months or later than 90 months; and

(v) Ten-year adjustable rate mortgages—no sooner than 120 months or later than 126 months.

(2) To set the new interest rate, the mortgagee will determine the change between the initial (*i.e.*, base) index figure and the current index figure, or will add a specific margin to the current index figure. The initial index figure shall be the most recent figure available before the date of mortgage loan origination. The current index figure shall be the most recent index figure available 30 days before the date of each interest rate adjustment.

* * * * *

(f) *Magnitude of changes.* The adjustable rate mortgage initial contract interest rate shall be agreed upon by the mortgagee and the mortgagor. The first adjustment to the contract interest rate shall take place in accordance with the schedule set forth under paragraph (d) of this section. Thereafter, for all adjustable rate mortgages, the adjustment shall be made annually and shall occur on the anniversary date of the first adjustment, subject to the following conditions and limitations:

(1) For one-, three-, and five-year adjustable rate mortgages, no single adjustment may result in a change in either direction of more than one percentage point from the interest rate in effect for the period immediately preceding that adjustment. Index changes in excess of one percentage

point may not be carried over for inclusion in an adjustment for a subsequent year. Adjustments in the effective rate of interest over the entire term of the mortgage may not result in a change in either direction of more than five percentage points from the initial contract interest rate.

(2) For seven- and ten-year adjustable rate mortgages, no single adjustment to the interest rate shall result in a change in either direction of more than two percentage points from the interest rate in effect for the period immediately preceding that adjustment. Index changes in excess of two percentage points may not be carried over for inclusion in an adjustment in a subsequent year. Adjustments in the effective rate of interest over the entire term of the mortgage may not result in a change in either direction of more than six percentage points from the initial contract rate.

(3) At each adjustment date, changes in the index interest rate, whether increases or decreases, must be translated into the adjusted mortgage interest rate, except that the mortgage may provide for minimum interest rate change limitations and for minimum increments of interest rate changes.

(g) *Pre-Loan Disclosure.* The mortgagee is required to make available to the mortgagor, at the time of loan application, a written explanation of the features of an adjustable rate mortgage consistent with the disclosure requirements applicable to variable rate mortgages secured by a principal dwelling under the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*

* * * * *

(i) *Cross-reference.* Sections 203.21 (level payment amortization provisions) and 203.44 (open-end advances) do not apply to this section. This section does not apply to a mortgage that meets the requirements of §§ 203.18(a)(4) (mortgagors of secondary residences), 203.18(c) (eligible non-occupant mortgagors), 203.18(d) (outlying area properties), 203.43 (miscellaneous type mortgages), 203.43c (mortgages involving a dwelling unit in a cooperative housing development), 203.43d (mortgages in certain communities), 203.43e (mortgages covering houses in federally impacted areas), 203.45 (graduated payment mortgages), or 203.47 (growing equity mortgages).

(j) *Aggregate amount of mortgages insured.* The aggregate number of adjustable rate mortgages insured pursuant to this section and 24 CFR part 234 in any fiscal year may not exceed 30 percent of the aggregate number of mortgages and loans insured by the Secretary under Title II of the National Housing Act during the preceding fiscal year.

* * * * *

Dated: March 3, 2004.

**John C. Weicher,**

*Assistant Secretary for Housing-Federal Housing Commissioner.*

[FR Doc. 04–5314 Filed 3–9–04; 8:45 am]

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**H.R. 743/P.L. 108–203**

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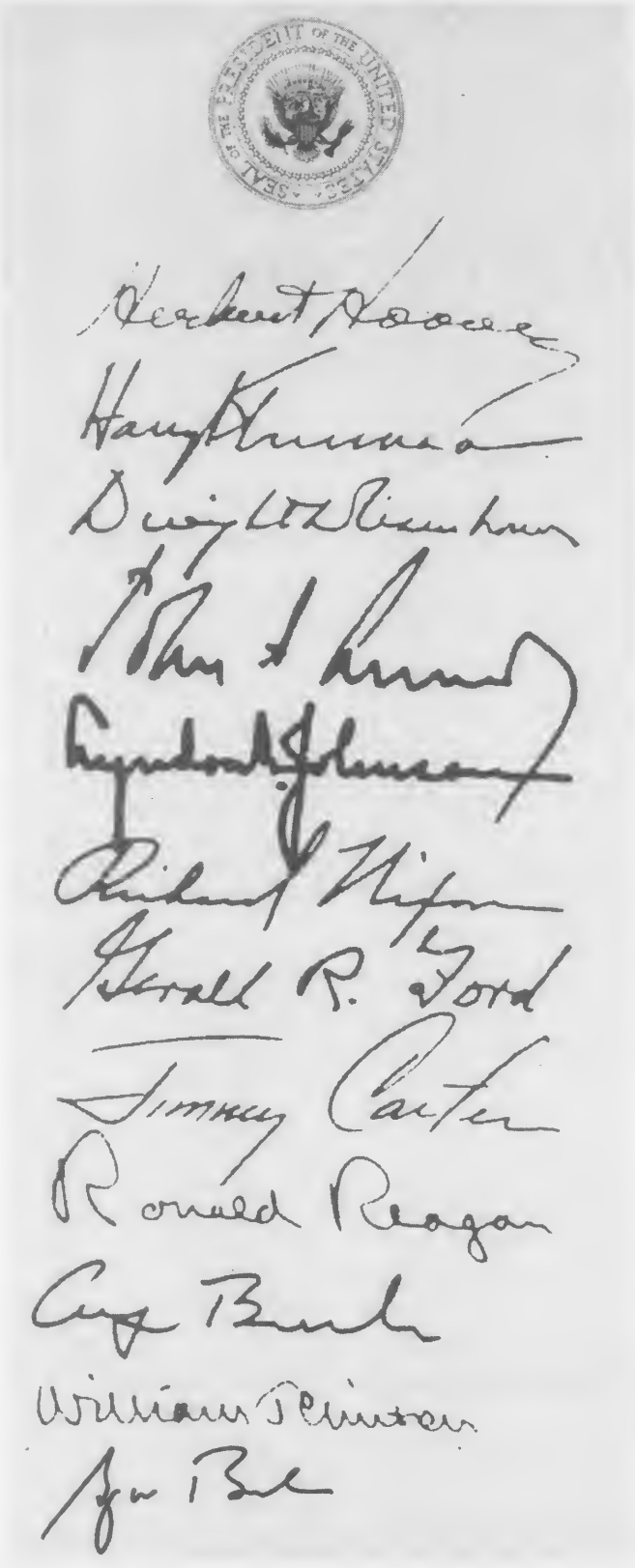

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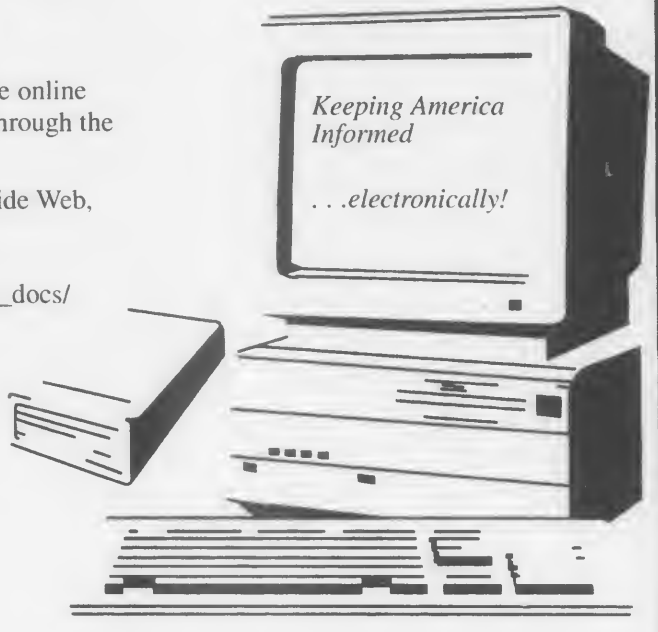


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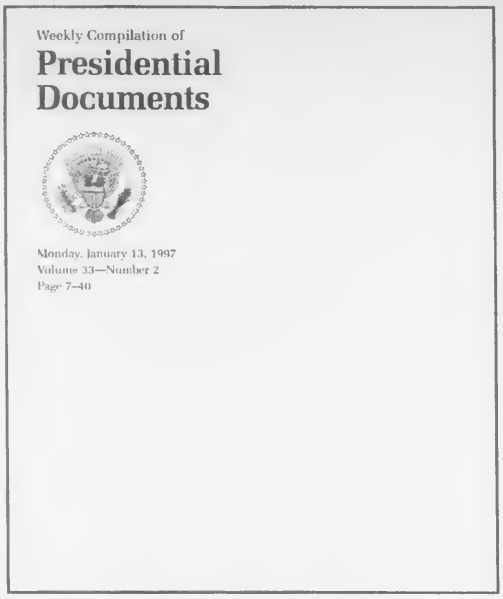


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